
AXONN CORPORATION VS DAVID NEWMAN, ET AL

ERIN PIERCE

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**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

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**EXHIBIT
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(1) UNITED STATES DISTRICT COURT
 (2) EASTERN DISTRICT OF LOUISIANA
 (3) AXONN CORPORATION CIVIL ACTION
 (4) NO. 95-0396
 (5) VERSUS
 (6) DAVID NEWMAN AND DAVID SECTION "1"
 (7) NEWMAN & ASSOCIATES, P.C. MAGISTRATE 4
 (8) AND ABC INSURANCE CO.
 (9) *****
 (10) The deposition of ERIN PIERCE, given in
 (11) the above-entitled cause, pursuant to the
 (12) following stipulation, before Giselle B. Ford, a
 (13) Certified Court Reporter, authorized to
 (14) administer oaths and take depositions, taken at
 (15) McIlhenny Stafford, 643 Magazine Street, New
 (16) Orleans, Louisiana, 70130, on Tuesday, July 8,
 (17) 1997, commencing at 10:00 a.m.
 (18)
 (19)
 (20)
 (21)
 (22)
 (23)
 (24)
 (25)

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(1) APPEARANCES:
 (2) REPRESENTING THE PLAINTIFF:
 (3) STONE, PIGMAN, WALTHER, WITTMANN &
 (4) MITCHINSON, L.L.P.
 (5) By: Steven M. Usdin, Esq.
 (6) 346 Carondelet Street
 (7) New Orleans, Louisiana 70130-3508
 (8) REPRESENTING THE DEFENDANTS:
 (9) MCILHENNY STAFFORD
 (10) By: Henri Wolbrette, III, Esq.
 (11) Kathleen A. Manning, Esq.
 (12) 643 Magazine Street
 (13) New Orleans, Louisiana 70130
 (14) ALSO PRESENT:
 (15) Colin Black
 (16) REPORTED BY:
 (17) GISELLE B. FORD, R.P.R.,
 (18) CERTIFIED SHORTHAND REPORTER
 (19)
 (20)
 (21)
 (22)
 (23)
 (24)
 (25)

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STIPULATION

(1)
 (2)
 (3) It is stipulated and agreed by and between
 (4) counsel for the parties hereto that the
 (5) deposition of the aforementioned witness is
 (6) hereby being taken for any and all purposes
 (7) allowed pursuant to the Federal Rules of Civil
 (8) Procedure.
 (9) That the formalities of sealing,
 (10) certification and filing are specifically
 (11) waived. The witness reserves the right to read
 (12) and sign the deposition.
 (13) That all objections, save those as to the
 (14) form of the question and the responsiveness of
 (15) the answers, are hereby reserved until such time
 (16) as this deposition, or any part thereof may be
 (17) used or sought to be used in evidence.
 (18) * * *
 (19) Giselle B. Ford, R. P. R., Certified Court
 (20) Reporter, in and for the State of Louisiana,
 (21) officiated in administering the oath to the
 (22) witness.
 (23) * * *
 (24)
 (25)

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- (1) ERIN PIERCE, 2320 TORTOISE DRIVE,
 (2) MANDEVILLE, LOUISIANA, 70448, AFTER HAVING BEEN
 (3) FIRST DULY SWORN BY THE ABOVE-NAMED CERTIFIED
 (4) COURT REPORTER, WAS EXAMINED AND TESTIFIED AS
 (5) FOLLOWS:
 (6) BY MR. WOLBRETTE:
 (7) And, Ms. Pierce, do you want to read
 (8) and sign the deposition, or you can waive it.
 (9) It's up to you.
 (10) BY MR. USDIN:
 (11) What he's asking you is do you want
 (12) to, after the deposition is complete, would you
 (13) like to read it and look for any typographical
 (14) type of errors or anyplace where you misspoke in
 (15) a way. You can't change your answer obviously
 (16) after. Typically witnesses do want to read and
 (17) sign it.
 (18) BY THE WITNESS:
 (19) Yes.
 (20) BY MR. USDIN:
 (21) But you don't have to.
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q And is it Ms? Mrs. Pierce? How do I
 (24) address you?
 (25) A Erin is fine.

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- (1) Q I probably can't do that, although
 (2) outside of this -
 (3) A Ms. Pierce is fine.
 (4) BY MR. USDIN:
 (5) And because of some of the documents I
 (6) suspect we'll get into, we'll take this subject
 (7) to the terms of the confidentiality order we
 (8) have agreed to.
 (9) BY MR. WOLBRETTE:
 (10) Right.
 (11) EXAMINATION BY MR. WOLBRETTE:
 (12) Q Ms. Pierce, have you ever given a
 (13) deposition before?
 (14) A No, I have not.
 (15) Q Has anybody explained to you in the
 (16) last few days what the process is here?
 (17) A Steve has, yes.
 (18) Q Mr. Usdin is an excellent lawyer so I'm
 (19) sure he's given you the whole deal.
 (20) BY MR. USDIN:
 (21) That part doesn't have to be
 (22) confidential about the excellent lawyer.
 (23) BY MS. MANNING:
 (24) We'll make that public.
 (25) EXAMINATION BY MR. WOLBRETTE:

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- (1) Q The court reporter's taking down every
 (2) word that anybody said in the room, so it's best
 (3) if we don't have two people or three people
 (4) talking at the same time. So try to let me
 (5) finish my questions before you start answering.
 (6) There may also be times when somebody
 (7) objects. A lawyer may object, so don't start
 (8) your answer until the lawyer finishes the
 (9) objection. Probably you're going to get to
 (10) answer the question unless somebody
 (11) specifically, for some reason, tells you not to
 (12) answer it because this is a discovery
 (13) deposition, and there's no judge here to rule on
 (14) the objections.
 (15) A Okay.
 (16) Q You'll probably be able to answer, but
 (17) let the lawyer finish the objection before you
 (18) answer. Also, what you just did, nod, you can't
 (19) do in a deposition. Okay? You have to answer
 (20) out loud. Okay?
 (21) A Okay.
 (22) Q That's hard. And most people, even
 (23) people who've been through lots of depositions
 (24) forget that, so I'm sure it's going to happen.
 (25) And I'll remind you at the time. Okay?

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- (1) A Okay.
 (2) Q If I ask you something that you don't
 (3) understand, don't be embarrassed to say you
 (4) don't understand it.
 (5) A Okay.
 (6) Q Lawyers ask lots of long-winded
 (7) questions, and I'm no exception. It may be I'm
 (8) getting tongue-tied, and just tell me if you
 (9) don't understand. It's important that we
 (10) communicate.
 (11) A Right.
 (12) Q If I don't understand the answer you've
 (13) given or I think maybe you haven't heard the
 (14) question, I'll let you know and we'll try it
 (15) again.
 (16) A Okay.
 (17) Q Can you give me a little bit of
 (18) personal background, your marital status, your
 (19) age, your education. We can do those one at a
 (20) time; or, to save time, you can just go ahead
 (21) and tell me.
 (22) A I'm 36 years old. Married. What else
 (23) do you want to know?
 (24) Q Education?
 (25) A High school graduate, St. Mary's

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- (1) Dominican High.
 (2) Q That's Dominican in New Orleans, right?
 (3) A M mm-h mm (affirmative response).
 (4) BY MR. WOLBRETTE:
 (5) Off the record.
 (6) (DISCUSSION OFF THE RECORD.)
 (7) EXAMINATION BY MR. WOLBRETTE:
 (8) Q And do you have children?
 (9) A Yes, one daughter.
 (10) Q And you live in?
 (11) A Mandeville.
 (12) Q And you've lived there for how long?
 (13) A Four years.
 (14) Q Are you employed?
 (15) A Self-employed.
 (16) Q What is your business?
 (17) A Office management, administrative for
 (18) various types of companies, attorneys, CPA's,
 (19) you know, small business people.
 (20) Q So do you work out of an office or your
 (21) house?
 (22) A Yes. Some of the work I can do from my
 (23) home. Other clients need me to go on site.
 (24) Q It's not that you're in one office all
 (25) the time. You visit various clients and you

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- (1) perform office management-type functions?
 (2) A Bookkeeping, secretarial, you know.
 (3) Q Whatever they need?
 (4) A Whatever they need.
 (5) Q How long have you been doing that sort
 (6) of work?
 (7) A Since I left Axonn.
 (8) Q And when was that?
 (9) A I left Axonn in December of '94, and I
 (10) began, you know, doing contract labor in
 (11) January, '95.
 (12) Q Okay. How long were you with Axonn?
 (13) A About three and a half years. I
 (14) started August, '91.
 (15) Q And what was your position at Axonn,
 (16) and if it changed, you can tell me that.
 (17) A Right. I started off as a secretary,
 (18) and I believe after about six months, yeah,
 (19) about six months later, I became office manager.
 (20) Q Did you remain the office manager until
 (21) you left?
 (22) A Until I left.
 (23) Q Were you the secretary for any
 (24) particular person or more than one person?
 (25) A At first, Britton Sanderford. I did

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- (1) some work for Steve Fant. My main
 (2) responsibility, though, was to Britton, and I
 (3) hired secretaries accordingly to handle work for
 (4) the other engineers.
 (5) Q Let me apologize to you in advance.
 (6) You're the first witness that we've taken from
 (7) Axonn. So you're the guinea pig. So there's a
 (8) lot of information we need to get, and
 (9) unfortunately we're going to ask you.
 (10) If you don't know, tell me, and if you
 (11) do know, let me know.
 (12) A Sure.
 (13) Q Basic background information.
 (14) Basically I want to find out a little bit about
 (15) the chain of command or the structure of Axonn.
 (16) So I take it, Mr. Sanderford was the boss?
 (17) A President.
 (18) Q President of the company.
 (19) BY MR. USDIN:
 (20) Can we go off the record.
 (21) (DISCUSSION OFF THE RECORD.)
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q So Mr. Sanderford was the president.
 (24) Who are the other people who were there? You
 (25) mentioned Mr. Fant. What was his position?

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- (1) A Steve Fant, vice-president.
 (2) Q Okay. And were there any other
 (3) officers?
 (4) A Are you referring to management?
 (5) Q Yeah. Any other management personnel?
 (6) A No.
 (7) Q Were there any other employees there?
 (8) A Oh, yes. There was two bookkeepers.
 (9) Are you referring to when I first started?
 (10) Q Yes.
 (11) A I know I was the twelfth employee, so
 (12) the remainder were engineers and lab technicians
 (13) and programmers.
 (14) Q Did Mr. Fant have any particular
 (15) responsibilities that you could describe to us?
 (16) A He was vice-president of marketing.
 (17) Q Was there anybody else from the time
 (18) that you were there until the time that you
 (19) left, any other employees who were involved in
 (20) marketing?
 (21) A No.
 (22) Q How about licensing? I don't know if
 (23) that means the same thing.
 (24) A That's basically what Steve did, found
 (25) the clients for licensing.

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- (1) Q And about the time you left, other than
 (2) Mr. Sanderford and Mr. Fant, were there any
 (3) other people in management?
 (4) A There was a project manager, Michael
 (5) Kessler. He oversaw the engineering projects.
 (6) Q Did you know Mr. Michael Eckstein?
 (7) A Yes.
 (8) Q What was Mr. Eckstein's role, if any,
 (9) for Axonn?
 (10) A The corporate attorney.
 (11) Q There are two other legal entities that
 (12) I'm aware of, Life Point Corporation and then
 (13) there's a Life Point Partnership.
 (14) Did you have any involvement in their
 (15) affairs as part of your duties?
 (16) A Everybody wore both hats.
 (17) Q Was there anybody other than
 (18) Mr. Sanderford and Mr. Fant, and you mentioned
 (19) Mr. Kessler I think, that would have been
 (20) involved with Life Point, either the partnership
 (21) or the corporation? In other words, I'm trying
 (22) to find out who all the players were? And we're
 (23) limiting it to Axonn.
 (24) Was there anybody in addition to those
 (25) people that might have had some involvement with

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- (1) either Life Point, the corporation, or Life
 (2) Point, the partnership?
 (3) A No. Not that I'm aware of.
 (4) Q I appreciate it. Thank you. Can you
 (5) tell me some of the things that you were
 (6) responsible for doing as office manager?
 (7) A Hiring of the clerical staff and
 (8) designating, you know, job descriptions for the
 (9) clerical staff, and once I had a full
 (10) administrative staff, my responsibilities, other
 (11) than managing them, was to work with the
 (12) patents, handle all the patent work.
 (13) Q What do you mean by work with the
 (14) patents? Sort of give me a general description.
 (15) A Typing up the applications,
 (16) corresponding with Dave Newman, you know, just
 (17) the day-to-day operations of getting a patent
 (18) application filed.
 (19) Q Did you also keep Mr. Sanderford
 (20) informed about the status of the various
 (21) patents?
 (22) A Right.
 (23) Q Did you, in addition to keeping
 (24) Mr. Sanderford informed about the status of the
 (25) patents, did you keep anybody else informed,

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- (1) either Mr. Fant or anybody?
 (2) A No. Steve Fant was not involved with
 (3) the patent process.
 (4) Q Did you ever talk to Mr. Eckstein about
 (5) the status of the patents?
 (6) A Same thing. He was not involved in
 (7) that at all.
 (8) Q What about the payment of legal bills,
 (9) was that part of your jobs?
 (10) A M'm-h'mm (affirmative response).
 (11) Q So you were -
 (12) A I was the first one to look over
 (13) Mr. Newman's bills, and kind of - what I would
 (14) do is take one of Mr. Newman's invoices and give
 (15) Britton, an idea because his bills would be very
 (16) brief, and I would expand more and say, okay,
 (17) Britton, this is what we're being billed for
 (18) this because he did that and so on.
 (19) Q How about other lawyers bills?
 (20) A No. I was only involved in -
 (21) Q In the patent?
 (22) A In the patent.
 (23) Q So Mr. Eckstein's bills would not have
 (24) gone to you for an initial review?
 (25) A For approval, no.

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- (1) Q Or Mr. Daniel Lund's bills? He was the
 (2) lawyer involved in the Arthur litigation. You
 (3) would not have seen those?
 (4) A No.
 (5) Q There was another patent lawyer
 (6) involved named Mr. Pugh. Do you remember that?
 (7) A When I first started, right, but I
 (8) didn't really have any dealings with Mr. Pugh.
 (9) Q You didn't review his bills?
 (10) A No. By the time I began reviewing
 (11) bills, Emmett Pugh - all the work had been
 (12) turned over to Dave Newman.
 (13) Q You would have assumed the position of
 (14) office manager sometime in early 1992 I suppose?
 (15) A Correct.
 (16) Q All right. I want to start with No. 4.
 (17) BY MR. WOLBRETTE:
 (18) Off the record.
 (19) (DISCUSSION OFF THE RECORD.)
 (20) EXAMINATION BY MR. WOLBRETTE:
 (21) Q Ms. Pierce, let me also say we're going
 (22) to look at a lot of documents today. This is
 (23) not a memory test. You can take as much time as
 (24) you want to look at the document. It's also not
 (25) like playing gin. If there's a document that

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- (1) we've already passed that you want to go back to
(2) and look in the pile, you can do that.
(3) **A Okay.**
(4) **Q** And if there's some other document that
(5) you think exists that we haven't looked at and
(6) you want to see it, just tell us. If we've got
(7) it we'll find it and give it to you, and if we
(8) don't have it, we can ask Mr. Usdin and he can
(9) give it to you because I know this is a long
(10) time ago, and there are a lot of documents.
(11) **A Right.**
(12) **Q** This letter which we've marked as D-4
(13) is a letter from Mr. Newman to you; is that
(14) correct?
(15) **A M'mm-h'mm (affirmative response).**
(16) **Q** And this has to do with some possible
(17) problem that Mr. Emmett Pugh mentions in a
(18) letter to Mr. Sanderford that's attached to the
(19) document; is that right?
(20) **A Yes.**
(21) **Q** And is this about the time that you
(22) would have become involved as the office manager
(23) dealing with the patents, or did you have some
(24) earlier involvement? It's one of the first
(25) documents I could find. That's why I'm asking

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- (1) it this way.
(2) **A Well, my involvement with the patent**
(3) **process was even when I was a secretary because**
(4) **I was the only secretary.**
(5) **Q** At least we know that by September the
(6) 9th, 1992, you're now involved with the patent
(7) process, although you may have been involved
(8) before that?
(9) **A Right. Right. And when I say**
(10) **involved, I mean typing applications and sending**
(11) **them to the attorneys.**
(12) **Q** Now, is this about the time that
(13) Mr. Newman was rehired by Axonn to take over
(14) from Mr. Pugh?
(15) **A I don't remember when that would have**
(16) **been.**
(17) **Q** Do you remember that Mr. Newman was
(18) handling the patent matters, and then Mr. Pugh
(19) started handling the patent matters, and then
(20) they went back to Mr. Newman?
(21) **BY MR. USDIN:**
(22) **Objection. I think a lot of that**
(23) **happened before she was even there.**
(24) **BY THE WITNESS:**
(25) **I was going to say it was before.**

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- (1) **EXAMINATION BY MR. WOLBRETTE:**
(2) **Q** At least in September of 1992, we know
(3) that Mr. Newman is now involved; is that
(4) correct?
(5) **A Right.**
(6) **Q** Now let's look at the next exhibit,
(7) which we'll make D-5, which is a letter of
(8) September the 10th, 1992, from you to
(9) Mr. Newman.
(10) **A (Viewing document). Okay.**
(11) **Q** And given the content of this letter
(12) and the power of attorney and the areas of the
(13) things that are listed, this again, would
(14) indicate to you, would it not, that about
(15) September of 1992 is when Mr. Newman was
(16) becoming involved with these patents?
(17) **A Correct.**
(18) **Q** And then the next letter which we've
(19) marked as D-6 is a September 24th, 1992, letter
(20) from you to Mr. Newman.
(21) **A Okay.**
(22) **Q** And this letter basically discusses
(23) fees on the various patents?
(24) **A Patents.**
(25) **BY MR. USDIN:**

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- (1) I'm going to object. The letter and
(2) the ones before them speak for themselves. I'm
(3) not asking if she remembers them or what hers
(4) say.
(5) **EXAMINATION BY MR. WOLBRETTE:**
(6) **Q** And the patent that brings us here, the
(7) one that went abandoned Serial No. 782,345; is
(8) that correct?
(9) **A Correct.**
(10) **Q** Which is referred to in Paragraph 1 of
(11) this September 24th letter, correct?
(12) **A M'mm-h'mm (affirmative response).**
(13) **Q** All right.
(14) **A That's correct.**
(15) **BY MR. USDIN:**
(16) **Off the record.**
(17) **(DISCUSSION OFF THE RECORD.)**
(18) **EXAMINATION BY MR. WOLBRETTE:**
(19) **Q** And then the next letter is D-7.
(20) **BY MR. USDIN:**
(21) **Dated?**
(22) **EXAMINATION BY MR. WOLBRETTE:**
(23) **Q** Dated October the 5th, 1992.
(24) **BY MR. USDIN:**
(25) **You want to read the whole thing?**

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- (1) BY MR. WOLBRETTE:
 (2) No. I'm only going to ask her about
 (3) the first page. It's attached for completeness
 (4) because that's the way it came to us.
 (5) BY THE WITNESS:
 (6) Okay.
 (7) EXAMINATION BY MR. WOLBRETTE:
 (8) Q Now, in the first paragraph of the
 (9) letter, there's a discussion of the Frequency
 (10) Agile Radio?
 (11) A Frequency Agile Radio.
 (12) Q That's not the patent that we're
 (13) concerned with in our case; is that correct?
 (14) A That's correct.
 (15) Q And with respect to that patent, it
 (16) says that Britton considers this a high tech
 (17) patent application, right?
 (18) A Correct.
 (19) Q Can you explain to me what you meant
 (20) when you wrote that Britton considers this a
 (21) high tech patent application?
 (22) A There were patents, what he called high
 (23) tech, meaning he wanted Dave Newman to handle.
 (24) Low tech patents were patents that his
 (25) associate, Anthony Natoli would be able to

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- (1) handle.
 (2) Q Okay. The patent that we're concerned
 (3) with in our case, the Serial No. 782,345, was
 (4) that a high tech or a low tech patent, using
 (5) this classification?
 (6) A I don't recall.
 (7) Q Can you tell from the amount of fees
 (8) that are indicated, if you would read on?
 (9) A I really don't remember.
 (10) Q Let's go to the next document, which is
 (11) D-8, which is October 6th, 1992, letter from
 (12) Dave Newman to you. Actually, I should say it's
 (13) not from David Newman. It's from Anthony Natoli
 (14) to you.
 (15) A Okay.
 (16) Q If Mr. Natoli was handling the patent
 (17) application as opposed to Mr. Newman personally,
 (18) did that indicate that it was low tech versus
 (19) high tech?
 (20) A Not necessarily.
 (21) Q Explain to me then. Why wouldn't it
 (22) necessarily indicate?
 (23) A There would be matters that were not
 (24) critical that, even if it were a high tech
 (25) patent, it would have been, say, a project on

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- (1) that patent, that it was something that Anthony
 (2) could handle that Britton felt comfortable in
 (3) letting Anthony handle.
 (4) BY MR. USDIN:
 (5) Let me also enter an objection when
 (6) you use the word "handle." I'm not sure what
 (7) you mean by that in terms of doing the actual
 (8) work, as opposed to ultimate responsibility for
 (9) the work since Mr. Newman's already testified
 (10) that he was the one responsible whether Natoli
 (11) was doing it or not.
 (12) BY MR. WOLBRETTE:
 (13) I'm not asking in terms of legal
 (14) responsibility. I'm asking simply because
 (15) there's been a statement that Britton considered
 (16) a certain patent a high tech application, and
 (17) I'm trying to find out whether or not 782,345
 (18) was considered a high tech application.
 (19) EXAMINATION BY MR. WOLBRETTE:
 (20) Q Do you have any recollection of that?
 (21) A My recollection is that all of the
 (22) Wireless Alarm patents, the mother patents and
 (23) everything that fell underneath it were all high
 (24) tech.
 (25) Q What was Mr. Newman's billing rate, do

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- (1) you know?
 (2) A I don't remember.
 (3) Q So is the D-8 letter from Mr. Natoli to
 (4) you, October the 6th, to you, confirms the
 (5) budget that you had written about in the
 (6) previous letter?
 (7) A That we had discussed, correct.
 (8) Q And did this not indicate to you that
 (9) Mr. Natoli would be handling this matter?
 (10) BY MR. USDIN:
 (11) Again, same objection when you use the
 (12) word handling. You can go ahead.
 (13) EXAMINATION BY MR. WOLBRETTE:
 (14) Q Go ahead.
 (15) A It indicates that, in other words, what
 (16) he was filing did not have to do with writing of
 (17) the claims. These were just basically forms
 (18) that needed to be filed, something that we
 (19) didn't need Dave Newman to do. His junior
 (20) associate could handle filing a small entity
 (21) form.
 (22) Q Well, he refers to not only filing the
 (23) small entity form, does he not, but also
 (24) responding to the outstanding Office Action,
 (25) right?

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- (1) BY MR. USDIN:
 (2) Are you asking whether she recalls
 (3) whether Mr. Natoli -
 (4) BY MR. WOLBRETTE:
 (5) No, I'm asking isn't that what the
 (6) letter says.
 (7) EXAMINATION BY MR. USDIN:
 (8) Q Object. The letter speaks for itself.
 (9) If you can recall independently of the letter,
 (10) you can answer that.
 (11) BY THE WITNESS:
 (12) No, I don't recall.
 (13) EXAMINATION BY MR. WOLBRETTE:
 (14) Q Does not the letter say that he's going
 (15) to respond to an outstanding Office Action?
 (16) A Sometimes an Office Action is the
 (17) patent office asking for a form. It doesn't
 (18) mean he's writing claims.
 (19) Q And you do not, sitting here, remember
 (20) what the Office Action was that he was
 (21) responding to?
 (22) A No.
 (23) Q But it is a fact, it was your
 (24) understanding, in October of 1992, that whatever
 (25) action needed to be taken with respect to

- (1) Off the record.
 (2) (DISCUSSION OFF THE RECORD.)
 (3) EXAMINATION BY MR. WOLBRETTE:
 (4) Q Did you get a chance to look at that?
 (5) A Yes, I have.
 (6) Q And then take a look at D-10, which is
 (7) the same letter, but with some writing on it,
 (8) some handwriting on it, and my question to you
 (9) is, do you recognize the handwriting on this?
 (10) A That's my handwriting.
 (11) Q So the subject basically, the subject
 (12) matter of this letter is Mr. Newman is saying
 (13) here the basic retainers we want on these
 (14) various files, correct?
 (15) BY MR. USDIN:
 (16) Objection. The letter speaks for
 (17) itself.
 (18) EXAMINATION BY MR. WOLBRETTE:
 (19) Q Correct? You can go ahead and answer.
 (20) Mr. Newman is saying that these are the
 (21) retainers that we would like to have at this
 (22) point?
 (23) A Right.
 (24) BY MR. USDIN:
 (25) Same objection.

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- (1) 782,345 and responding to the Office Action,
 (2) Mr. Natoli was going to be the one to do it?
 (3) A With Dave Newman, yes, and with Dave
 (4) Newman's overseeing everything.
 (5) Q Are you aware of any correspondence
 (6) wherein this particular patent, the one we're
 (7) concerned with in our case, was referred to as a
 (8) high tech item by Mr. Sanderford or you or
 (9) anybody else?
 (10) A I'm sorry. Say that again.
 (11) Q We've seen already some correspondence
 (12) from you in which another patent was referred to
 (13) as a high tech item. Are you aware of any
 (14) correspondence in which the one we're concerned
 (15) with in this lawsuit was ever referred to as a
 (16) high tech item?
 (17) A No. I would not remember.
 (18) Q And you have no personal recollection,
 (19) at this point in time, of Mr. Sanderford calling
 (20) this particular patent a high tech item?
 (21) A I don't recall.
 (22) Q Let's look at the next item which will
 (23) be D-9, which is an October 13th, 1992, letter
 (24) from David Newman to Mr. Sanderford.
 (25) BY MR. USDIN:

- (1) EXAMINATION BY MR. WOLBRETTE:
 (2) Q And this is the kind of letter that
 (3) would come to you to review as part of your job;
 (4) is that right?
 (5) A That's correct.
 (6) Q And you made some notations on it in
 (7) connection with doing your job; is that right?
 (8) A That's correct.
 (9) Q And the one that's of concern to our
 (10) lawsuit is the first one, AXN-015, correct?
 (11) A Correct.
 (12) Q And it says paid 11-2-92, written
 (13) across there; is that right?
 (14) A That's right.
 (15) Q Is that what you wrote?
 (16) A That's what I wrote.
 (17) Q And then there's a star, and then
 (18) below, on the bottom of the page it says, "did
 (19) not pay \$40 for recording of Assignment since
 (20) James Arthur won't sign documents"; is that
 (21) correct?
 (22) A That's correct.
 (23) Q Do you know when you wrote that?
 (24) A No.
 (25) Q Would it have been after 11-2-92?

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- (1) A I don't remember.
 (2) Q Well, it says, "Paid, 11-2-92," and
 (3) then star?
 (4) A The star was referring to my note at
 (5) the bottom.
 (6) Q Right.
 (7) A Right.
 (8) Q You wouldn't have written the star with
 (9) the note at the bottom prior to 11-2-92?
 (10) A That's correct.
 (11) Q So 11-2-92 or afterwards?
 (12) A Or after.
 (13) Q Now, do you remember when you found out
 (14) that James Arthur wouldn't sign a document?
 (15) A What date?
 (16) Q Yes.
 (17) A No, I do not.
 (18) Q What document were you referring to
 (19) that James Arthur won't sign?
 (20) A It was a Declaration of Inventorship.
 (21) Q How did you find out that Mr. Arthur
 (22) wouldn't sign the Declaration of Inventorship?
 (23) A Because we sent it and he would not -
 (24) he refused to sign it and send it back.
 (25) Q Did you do the sending of the

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- (1) Declaration to Mr. Arthur?
 (2) A Yes. Typed it and mailed it.
 (3) Q And do you remember receiving it back?
 (4) Is that how you found out he wouldn't sign it,
 (5) or was there some other way you found out?
 (6) A I know we didn't receive it back.
 (7) Q I'm not trying to trick you.
 (8) A Right. I really don't remember.
 (9) Q There's a letter from Mr. Arthur's
 (10) attorney that was sent, and I thought perhaps
 (11) you may have seen that, or I'm just trying to
 (12) find out.
 (13) A I don't recall the sequence of events.
 (14) Q But in any event, on or after 11-2-92,
 (15) you learned Mr. Arthur would not sign this
 (16) Declaration?
 (17) A Correct.
 (18) Q Did you understand why this Declaration
 (19) was necessary? Did you have an understanding of
 (20) that?
 (21) A No.
 (22) Q What did you understand was the
 (23) significance of Mr. Arthur not signing the
 (24) Declaration to Axonn?
 (25) A I knew the Declaration - we needed the

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- (1) Declaration in order to respond to the Office
 (2) Action.
 (3) Q That was the Office Action that Natoli
 (4) was going to answer?
 (5) A I don't recall which one. I don't
 (6) recall which one.
 (7) Q After you learned that Mr. Arthur would
 (8) not sign the Declaration, did you find out
 (9) whether there were any alternatives in order to
 (10) answer the Office Action of the patent office?
 (11) BY MR. USDIN:
 (12) Object to the form of the question to
 (13) the extent you don't have a time frame in there.
 (14) You're talking about in the early - before
 (15) November?
 (16) EXAMINATION BY MR. WOLBRETTE:
 (17) Q Well, anytime after November the 2nd,
 (18) 1992, in that time frame, did you find out
 (19) whether there was some alternative available
 (20) because Mr. Arthur refused to sign?
 (21) A I don't recall when, when discussions
 (22) about alternatives came about.
 (23) Q Okay. Well, regardless of when, did
 (24) you ultimately learn at some point that there
 (25) was an alternative that might be used?

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- (1) A At that point in time, discussions
 (2) would have been between Britton and Mr. Newman,
 (3) not myself.
 (4) Q You're talking about a November 1992
 (5) time frame?
 (6) A Once we learned that James wouldn't
 (7) sign.
 (8) Q Right. Okay. Let's look at the next
 (9) exhibit, which would be October 16.
 (10) BY MR. USDIN:
 (11) Off the record.
 (12) (DISCUSSION OFF THE RECORD.)
 (13) EXAMINATION BY MR. WOLBRETTE:
 (14) Q So the subject matter of this letter,
 (15) this is Mr. Natoli's letter to you, correct?
 (16) A Correct.
 (17) BY MR. USDIN:
 (18) Objection to the form of the question.
 (19) All these letters speaks for themselves, and
 (20) you're now asking her whether she has a
 (21) recollection of it.
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q And the basic subject matter of this
 (24) letter is Mr. Natoli is sending you this
 (25) vendor's declaration to respond to the Office

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- (1) Action, among other things in the letter.
 (2) BY THE WITNESS:
 (3) (Nods head affirmatively.)
 (4) BY MR. USDIN:
 (5) Same objection.
 (6) EXAMINATION BY MR. WOLBRETTE:
 (7) Q You have to say it out loud.
 (8) A Correct.
 (9) Q As of October 16th, 1992, do you recall
 (10) that apparently there was no problem yet
 (11) discovered with Mr. Arthur's refusing to sign?
 (12) BY MR. USDIN:
 (13) Objection. The letter doesn't say
 (14) that, and there's no foundation for that
 (15) question.
 (16) EXAMINATION BY MR. WOLBRETTE:
 (17) Q Does that refresh your recollection
 (18) that at least as of October 16th, nobody knew
 (19) about any problem?
 (20) A Exactly. No one knew of a problem.
 (21) Q Next exhibit is -
 (22) BY MS. MANNING:
 (23) 12.
 (24) EXAMINATION BY MR. WOLBRETTE:
 (25) Q Actually the first page of this letter,

- (1) BY MR. USDIN:
 (2) Objection.
 (3) THE WITNESS:
 (4) No. That's "just."
 (5) EXAMINATION BY MR. WOLBRETTE:
 (6) Q How are they - I'm sorry. How, just
 (7) how?
 (8) A "Are the claims modified." This word,
 (9) is that what you're referring to? (Indicating)
 (10) That's "the."
 (11) Q That's "the." Okay.
 (12) A "In other words, I want the new claims.
 (13) Get from Newman ASAP if you, if you don't have"
 (14) - it looks like some of it was copied off -
 (15) "get from Newman ASAP if you don't have - I
 (16) need answer." I'm assuming that's I need to
 (17) answer a legal question to "MX," and MX is Mike
 (18) Eckstein. You want me to read it again?
 (19) Q Do you remember what, if anything, you
 (20) did as a result of seeing that note?
 (21) A No, I don't remember.
 (22) Q Take a look at the next exhibit, D-13,
 (23) which is the last two pages of this letter, and
 (24) I apologize for giving this to you piecemeal,
 (25) but this is how we received it. And I'm

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- (1) and there's some handwriting on it up in the
 (2) top, left corner. Is that your note?
 (3) A Top left is my note.
 (4) Q And it says: "This is the package JA
 (5) would not sign. EP."
 (6) A Right.
 (7) Q To whom is that note directed, would
 (8) you know?
 (9) A To Britton.
 (10) Q And then there's a note on the side,
 (11) kind of on the right side, sort of diagonally.
 (12) Can you tell me whose note that is?
 (13) A That's Britton's.
 (14) Q Can you read that for me?
 (15) A Yes, I can.
 (16) Q I would imagine you had some practice
 (17) doing that?
 (18) A "E."
 (19) Q E is you?
 (20) A That's me. "I need to see" - it's
 (21) been a while. "E, I need to see how they
 (22) reprinted claims, just how are the claims
 (23) modified."
 (24) Q Wait. Let me just ask you this. Could
 (25) it be, "how are JA's claims modified?"

- (1) interested in the note on the top of the page.
 (2) Can you tell me whose writing that is?
 (3) A That's Britton Sanderford's.
 (4) Q And it's a poor quality copy, but
 (5) that's what we got, so can you make it out?
 (6) A "E, keep with stuff JA would not sign."
 (7) Q Can you tell me what that means or what
 (8) that meant to you at the time?
 (9) BY MR. USDIN:
 (10) If you recall.
 (11) BY THE WITNESS:
 (12) I don't recall.
 (13) EXAMINATION BY MR. WOLBRETTE:
 (14) Q Was there a file that, a "JA would not
 (15) sign" file, for lack of a better term?
 (16) A They were the documents, the
 (17) declaration that he wouldn't sign.
 (18) Q Okay. So keep with stuff JA would not
 (19) sign, is that telling you to file it?
 (20) A Put this letter with the rest of the
 (21) stuff.
 (22) Q This one already has a P number, P-23,
 (23) so we'll go with a separate number. October
 (24) 20th, 1992, from Mr. Natoli to you. And I
 (25) don't expect you to read the entire draft

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- (1) amendment, but if you'd kind of take a look
(2) through it, and particularly would you look at
(3) N000163, the bottom and 164, the top under
(4) remarks where it begins, "The Examiner also
(5) objects to the application, citing alterations
(6) which have not been initialed and/or dated."
(7) A Okay.
(8) Q Does this refresh your recollection
(9) that, at least as of October 20th, 1992, no one
(10) knew about the problem with Mr. Arthur refusing
(11) to sign?
(12) BY MR. USDIN:
(13) Objection as to what anyone knew,
(14) other than from her own personal knowledge.
(15) BY THE WITNESS:
(16) I don't remember.
(17) EXAMINATION BY MR. WOLBRETTE:
(18) Q About what you knew, does it refresh
(19) your recollection as of October 20th, 1992, you
(20) were not aware of a problem?
(21) A Not of any problem - with James
(22) Arthur?
(23) Q With Mr. Arthur.
(24) A That's correct.
(25) Q Take a look at the next exhibit, which

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- (1) we'll go back to our D numbers. It will be
(2) D-14, and it's the same letter you just looked
(3) at, but it has some handwritten notes on it.
(4) Q Let's start at the bottom. Is that
(5) your note, "Britton?"
(6) A "Michele gave this to you." That's my
(7) note.
(8) Q But that refers to a patent that's not
(9) involved in our case, right?
(10) A Correct.
(11) Q The note up at - starts right under
(12) the date on the letter and kind of slants off to
(13) the right, isn't it Mr. Sanderford's?
(14) A That's Britton.
(15) Q Could you read that.
(16) A "E, this amendment is fine with me.
(17) Get JA's signature. It must be notarized. Ray
(18) Steib may be able to do that. Tell him to
(19) charge us if he does."
(20) Q Does this indicate to you that as of
(21) the date that Mr. Sanderford made this note, as
(22) far as Axonn knew, there wasn't going to be any
(23) problem with Mr. Arthur?
(24) BY MR. USDIN:
(25) Object to the form of the question.

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- (1) It's not a note that she did not write, and
(2) you're asking her what someone else understood
(3) at that time.
(4) BY MR. WOLBRETTE:
(5) Right.
(6) BY THE WITNESS:
(7) At this time there didn't seem to be a
(8) problem with James Arthur.
(9) EXAMINATION BY MR. WOLBRETTE:
(10) Q Where was Mr. Arthur physically located
(11) at this time, if you know? Was he in New
(12) Orleans, or was he in California or someplace?
(13) A I don't remember.
(14) Q Okay. Was he employed by Axonn at this
(15) point?
(16) A No.
(17) Q There's another note. Who is Ray
(18) Stodd?
(19) A Steib. S-T-E-I-B. From what I recall,
(20) he's a friend of Britton's who's an attorney who
(21) would have been able to notarize James'
(22) signature.
(23) Q Then there's another note in the
(24) right-hand margin, "please see my attached
(25) note." Is that your writing?

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- (1) A Yes.
(2) Q And it looks like the second line or
(3) part of the second line of the second paragraph
(4) adjacent to that note has been highlighted. And
(5) I'm going to read from what it says on the first
(6) exhibit, which was the same letter.
(7) The first line which is not highlighted
(8) says, "After we receive any comments on the
(9) Amendment, as well as" - and then the
(10) highlighted part is, "the executed documents as
(11) per our October 16, 1992," and then it
(12) highlights, "in this letter to you." What
(13) note were you referring to there?
(14) A I have no idea.
(15) Q Well, we've not been given any note.
(16) Do you have any knowledge of any?
(17) BY MR. USDIN:
(18) We've given you everything we've got.
(19) BY MR. WOLBRETTE:
(20) I know you have, but I was wondering if
(21) you would ask to see if they have this note.
(22) BY MR. USDIN:
(23) I'll look again.
(24) BY MR. WOLBRETTE:
(25) I have no doubt you have looked.

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- (1) BY MR. USDIN:
 (2) I understand, and I didn't take it as
 (3) anything other than that.
 (4) EXAMINATION BY MR. WOLBRETTE:
 (5) Q Let me put a number on this, D-14.
 (6) BY MR. USDIN:
 (7) What are you skipping?
 (8) BY MR. WOLBRETTE:
 (9) The October 20th.
 (10) EXAMINATION BY MR. WOLBRETTE:
 (11) Q The next will be D-15 which is an
 (12) October 27, 1992, letter from you to David
 (13) Newman.
 (14) A Okay.
 (15) Q And the last paragraph talks about the
 (16) particular patent that we're concerned with in
 (17) this lawsuit, right?
 (18) A Right.
 (19) Q And having read that paragraph, does
 (20) that refresh your recollection that, as of
 (21) October the 27th, 1992, you did not know about
 (22) any difficulties with Mr. Arthur?
 (23) A Correct.
 (24) Q Let's look at the next one, D-16.
 (25) BY MR. USDIN:

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- (1) This is not Bates numbered with your N
 (2) numbers.
 (3) BY MS. MANNING:
 (4) It is in that package, yes.
 (5) EXAMINATION BY MR. WOLBRETTE:
 (6) Q Take a look at that. (Indicating)
 (7) BY MS. MANNING:
 (8) For the record, the document, once it
 (9) did get numbered is N001524.
 (10) EXAMINATION BY MR. WOLBRETTE:
 (11) Q It's a November 2, 1992, letter from
 (12) Erin Pierce to Anthony Natoli. The serial
 (13) number that's indicated in the reference is not
 (14) the serial number of the patent that we're
 (15) concerned with in this litigation, correct?
 (16) A Right.
 (17) Q In the second paragraph, you say - I'm
 (18) not going to read it - but the urgent situation
 (19) that you referred to in that paragraph, is the
 (20) Arthur refusing to sign situation, or something
 (21) else?
 (22) A That would be Arthur not signing.
 (23) Q So as of November the 2nd, we now know
 (24) that you were aware of the Arthur situation; is
 (25) that right?

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- (1) A Right.
 (2) Q When I say, "the Arthur situation,"
 (3) specifically that Mr. Arthur refused to sign the
 (4) declaration that Mr. Natoli had sent to you?
 (5) A That's correct.
 (6) Q And the third paragraph, it says,
 (7) "Dave," I take that to be Dave Newman?
 (8) A Correct.
 (9) Q "Had a conversation with Steve Fant and
 (10) mentioned something about being able to file
 (11) documents for an "Unintentional Abandonment"; is
 (12) that right?
 (13) A That's correct.
 (14) Q Tell me about how you became aware of
 (15) this conversation concerning an Unintentional
 (16) Abandonment?
 (17) A I wouldn't remember.
 (18) Q Do you remember why Mr. Arthur refused
 (19) to sign?
 (20) A No, I don't.
 (21) BY MR. USDIN:
 (22) When you get to a suitable, very short
 (23) breaking point.
 (24) BY MR. WOLBRETTE:
 (25) Oh, sure. And, Ms. Pierce, anytime you

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- (1) want to take a break, let me know.
 (2) (WHEREUPON A RECESS WAS TAKEN.)
 (3) EXAMINATION BY MR. WOLBRETTE:
 (4) Q The next number?
 (5) BY MS. MANNING:
 (6) It's going to be 17, D-17.
 (7) EXAMINATION BY MR. WOLBRETTE:
 (8) Q The next letter is D-17. It's from you
 (9) to David Newman dated November the 3rd, 1992,
 (10) and I'm really only concerned with the first
 (11) paragraph of that.
 (12) A Okay.
 (13) Q And by this letter, are you sending
 (14) Mr. Newman the attorneys fees as well as the fee
 (15) to pay the patent office for the extension of
 (16) time to be filed in connection with Axonn-015?
 (17) A Correct.
 (18) Q The next number is P-24, which is a
 (19) cover letter from Mr. Natoli to you dated
 (20) November the 4th, 1992, in which he encloses the
 (21) Amendment filed in connection with Axonn-015,
 (22) correct?
 (23) A Correct.
 (24) Q And then I'm going to show you the same
 (25) letter which has some notes on it, which is

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- (1) D-18; and also actually it has a copy of the
 (2) Amendment attached to it; and ask if you could
 (3) read the note on the bottom of the page. Is
 (4) this Mr. Sanderford's note?
 (5) A That's Mr. Sanderford's writing.
 (6) "Okay. "E, this is if – file with the pack JA
 (7) "would not sign," in quotations, with this note,
 (8) so I will see it all together when I ask for
 (9) that pack in the future".
 (10) Q Is the pack JA would not sign the same
 (11) thing?
 (12) A We stuck everything in an envelope.
 (13) Q And if you would look at Page 8, at the
 (14) top, "A properly executed affidavit or
 (15) declaration signed by the inventors will be
 (16) submitted in compliance with the Examiner's
 (17) requirements immediately upon the availability
 (18) of the necessary documents."
 (19) A Correct.
 (20) BY MR. USDIN:
 (21) Objection. Document speaks for itself.
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q And that's different from the draft
 (24) amendment we had looked at a minute ago,
 (25) correct?

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- (1) BY MR. USDIN:
 (2) Objection. The documents speak for
 (3) themselves.
 (4) BY THE WITNESS:
 (5) I suppose, yeah. It's different from
 (6) the draft.
 (7) EXAMINATION BY MR. WOLBRETTE:
 (8) Q This particular paragraph that I just
 (9) read, the change was caused by Mr. Arthur's
 (10) refusal to sign?
 (11) A Correct.
 (12) Q Okay. I'm going to show you document
 (13) P-25, and ask you if you can identify the
 (14) handwritten notes on it.
 (15) A I don't know. It's just numbers, so
 (16) it's hard to tell.
 (17) Q That makes it easy. Let's go to the
 (18) next document which is D-19. And D-19 appears
 (19) to be a "Memorandum" dated November the 6th,
 (20) 1992, from Britton to you, and attached to it is
 (21) a handwritten note.
 (22) BY MR. USDIN:
 (23) I'm sorry. Did you say from Britton
 (24) –
 (25) EXAMINATION BY MR. WOLBRETTE:

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- (1) Q I'm sorry, to Britton from Erin, and a
 (2) handwritten note attached is the second page.
 (3) A Okay.
 (4) Q Was this a status you were giving to
 (5) Britton concerning all of the patents that were
 (6) being worked on by Newman's office?
 (7) A Right.
 (8) Q And the first one that's listed is the
 (9) one that concerns us, correct, 782,345?
 (10) A Right.
 (11) Q And in the end of this, you say that
 (12) "since James" – that would be James Arthur, I
 (13) take it?
 (14) A Correct.
 (15) Q – "Would not sign the Declarations,
 (16) other actions will have to take place, i.e. file
 (17) an "Uncooperative Employee" declaration, right?
 (18) A Correct.
 (19) Q What did you mean by "Uncooperative
 (20) Employee" declaration?
 (21) A Mr. Newman had informed us that we
 (22) could file a disgruntled employee declaration,
 (23) in other words, since he wouldn't sign the
 (24) Declaration of Inventionship.
 (25) Q That the other inventors could file an

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- (1) affidavit? Who would file the affidavit?
 (2) A Axonn Corporation.
 (3) Q And what did you understand that
 (4) declaration would say?
 (5) A I didn't know. It wasn't my job to
 (6) know.
 (7) Q Did you talk to Newman about the
 (8) "Uncooperative Employee" declaration?
 (9) A I don't remember who spoke to him about
 (10) it.
 (11) Q So you don't remember whether it was
 (12) you or whether somebody else spoke to you and
 (13) told you? You just don't remember?
 (14) A Right. I don't remember.
 (15) Q All right. Can you translate for us on
 (16) some of these notes? The first one up at the
 (17) top of the page, whose note is that?
 (18) BY MR. USDIN:
 (19) Upper left?
 (20) BY THE WITNESS:
 (21) The upper left is from Britton to me.
 (22) "E, I just need this one, the one JA didn't
 (23) sign. I want the patent itself."
 (24) EXAMINATION BY MR. WOLBRETTE:
 (25) Q So was Mr. Sanderford asking you to

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- (1) give him the patent application?
 (2) A The patent application.
 (3) Q And then to the right of that there's
 (4) some writing that looks like to me, it says,
 (5) "copy it to me?"
 (6) A Copy it to me.
 (7) Q And there's a line that goes down to
 (8) the middle of the paragraph dealing with
 (9) Wireless Alarm Serial No. 7B2,345. I don't know
 (10) what that line is going to. Maybe you can shed
 (11) some light on it.
 (12) BY MR. USDIN:
 (13) Do we know who the "copy to me"
 (14) handwriting is?
 (15) BY THE WITNESS:
 (16) Copy to me is Britton's handwriting as
 (17) well.
 (18) EXAMINATION BY MR. WOLBRETTE:
 (19) Q You don't know?
 (20) A I don't know what he was asking a copy
 (21) of.
 (22) Q Then there's a note off to the right
 (23) side?
 (24) A That's my handwriting.
 (25) Q Can you make it out?

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- (1) A "We haven't filed this yet. I think
 (2) they're working on the documents." It's just a
 (3) bad copy. I can't read the rest.
 (4) BY MR. WOLBRETTE:
 (5) Steve, have you guys got a better copy
 (6) of this?
 (7) BY MR. USDIN:
 (8) I don't know if we do or not.
 (9) BY MR. WOLBRETTE:
 (10) It would probably be helpful if we
 (11) could get it faxed over here before this depo's
 (12) over, if we could read this and see what it
 (13) says.
 (14) EXAMINATION BY MR. WOLBRETTE:
 (15) Q What about at the bottom, there's a
 (16) handwritten note that I'm guessing is
 (17) Mr. Sanderford's, that starts out, CIP?"
 (18) A That's correct. That's Britton's
 (19) handwriting.
 (20) Q What does that say?
 (21) A "CIP that was abandoned. Try to get a
 (22) copy."
 (23) Q Do you know what that's referring to?
 (24) A I don't know for sure.
 (25) Q Do you know of any, at this point,

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- (1) November 6th, '92, CIP that was abandoned?
 (2) BY MR. USDIN:
 (3) Objection. There's no foundation as
 (4) to when that note was written, whether it was
 (5) November 6th or whether it was some long time
 (6) after that.
 (7) EXAMINATION BY MR. WOLBRETTE:
 (8) Q Go ahead.
 (9) A Yeah, I think it's the other.
 (10) BY MR. USDIN:
 (11) Again, object to asking this witness
 (12) what someone else had in their mind when they
 (13) wrote it, whenever they wrote it; the Serial No.
 (14) 540, 97B.
 (15) EXAMINATION BY MR. WOLBRETTE:
 (16) Q Okay. That's D-16, right?
 (17) A (Nods head affirmatively).
 (18) Q We'll ask Mr. Sanderford.
 (19) A I'm not even sure if that was a CIP.
 (20) Q But his notation, CIP that was
 (21) abandoned, try to get a copy, might be related
 (22) to D-16?
 (23) A To D-16.
 (24) Q Okay. We'll ask him about that. And
 (25) then under that there's a note. What is that?

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- (1) A That's from me to Britton. "Attached.
 (2) Please just look at them. Don't write on them.
 (3) It's our only copy."
 (4) Q What are you referring to there?
 (5) A I have no idea.
 (6) Q Okay. And what's the note that's the
 (7) second page of this exhibit? Can you - that's
 (8) to Britton?
 (9) A To Britton from me. "Britton, the
 (10) application they submit is the mother patent
 (11) application. I guess the attached form tells
 (12) the Examiner which claims to look at. I also
 (13) attached the Amendment that was filed last week
 (14) in response to the Office Action."
 (15) Q And the Amendment that you were
 (16) referring to is the one that we've looked at.
 (17) It's attached to Exhibit D-1B; is that correct?
 (18) A I'm not sure.
 (19) Q Do you know any amendment that was
 (20) filed that week?
 (21) A Not that I'm aware of.
 (22) BY MR. USDIN:
 (23) Again, we don't know when that note
 (24) was written.
 (25) BY THE WITNESS:

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- (1) Right
- (2) EXAMINATION BY MR. WOLBRETTE:
- (3) Q Do you know when this note was written?
- (4) A No.
- (5) Q Do you know when the notes were written
- (6) on the November 6th, 1992 memorandum?
- (7) A No, I do not.
- (8) Q Do you think they were written at
- (9) approximately the same time the memorandum was
- (10) written?
- (11) BY MR. USDIN:
- (12) Objection. She's already said she
- (13) doesn't know.
- (14) EXAMINATION BY MR. WOLBRETTE:
- (15) Q Go ahead.
- (16) A I'd say the same day or a day or two
- (17) after.
- (18) BY MR. WOLBRETTE:
- (19) You want to take a break?
- (20) BY MR. USDIN:
- (21) Yes. Let me just call real quick.
- (22) (WHEREUPON A RECESS WAS TAKEN.)
- (23) EXAMINATION BY MR. WOLBRETTE:
- (24) Q Okay. We're going to go down three
- (25) documents.

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- (1) BY MS. MANNING:
- (2) That's D-20.
- (3) EXAMINATION BY MR. WOLBRETTE:
- (4) Q Ms. Pierce, D-20 appears to be a fax
- (5) transmittal to Dave Newman from Britton
- (6) Sanderford, but it's signed by you?
- (7) A Right.
- (8) Q And it's dated November 18th, 1992,
- (9) correct?
- (10) A Correct.
- (11) Q If you'll read the message.
- (12) A "Dave: Britton ask that I fax this to
- (13) you. It's the first letter we've received from
- (14) James Arthur's attorney. P.S.: Please give him
- (15) a call at the office or at his office.
- (16) 504-288-9611. Thanks."
- (17) Q And the letter from the attorney is
- (18) dated October the 30th, 1992, right?
- (19) A Correct.
- (20) Q Do you have any recollection of when
- (21) this letter was received?
- (22) A I do not.
- (23) Q Do you remember reading this letter, or
- (24) did you read the letter at the time, whenever it
- (25) was received?

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- (1) A The day it was received?
- (2) Q No. At about the time it was received,
- (3) within a day or two?
- (4) A No. I know it wasn't within a day or
- (5) two.
- (6) Q Did you read it at some point?
- (7) A Possibly as much as a couple of weeks
- (8) after.
- (9) Q And actually do you remember if it was
- (10) received on or about October the 31st or
- (11) November the 1st?
- (12) A I don't know.
- (13) Q Did you ever use a "Receive" stamp to
- (14) indicate when you received documents?
- (15) A No.
- (16) Q In any event, you reported to
- (17) Mr. Newman on the 18th of November, correct, by
- (18) fax?
- (19) A Yes.
- (20) Q And would you look at the last page of
- (21) Mr. Carmichael is apparently the attorney for
- (22) Mr. Arthur, correct?
- (23) A Correct.
- (24) Q There's a note on the box for Mike X?
- (25) A Mike Eckstein.

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- (1) Q Who wrote that?
- (2) A Britton Sanderford.
- (3) Q On the third page of this letter in
- (4) this middle paragraph.
- (5) A "It is our opinion" paragraph?
- (6) Q Right. In the middle of that, does
- (7) Mr. Carmichael state that, "We have advised
- (8) Mr. Arthur not to execute any of the documents
- (9) sent to him by David Newman and Associates," et
- (10) cetera, correct?
- (11) A Right.
- (12) BY MR. USDIN:
- (13) Objection. The letter speaks for
- (14) itself.
- (15) EXAMINATION BY MR. WOLBRETTE:
- (16) Q So was this letter the first, to your
- (17) knowledge, the first notification that Axonn
- (18) received that Mr. Arthur was not going to sign
- (19) this inventor declaration?
- (20) BY MR. USDIN:
- (21) Objection. That's not consistent with
- (22) the other documents. The question's not
- (23) consistent with the other documents. It lacks
- (24) foundation, number one; and, number two, you're
- (25) asking her knowledge of other people as opposed

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- (1) to knowledge of herself.
- (2) EXAMINATION BY MR. WOLBRETTE:
- (3) Q Go ahead. I'm asking you for what you
- (4) know. As far as you know?
- (5) A As far as I know, this was the first
- (6) notice of James being uncooperative.
- (7) Q And was this a surprise to Axonn?
- (8) A Yes.
- (9) BY MR. USDIN:
- (10) Same objection.
- (11) BY THE WITNESS:
- (12) Yes.
- (13) BY MR. USDIN:
- (14) As to what she knows versus others.
- (15) EXAMINATION BY MR. WOLBRETTE:
- (16) Q What was Mr. Sanderford's reaction of
- (17) getting news Mr. Arthur was not going to sign
- (18) this copy, if you know?
- (19) BY MR. USDIN:
- (20) Objection. If you're asking what
- (21) someone else's reaction was? If she was a
- (22) witness, what he told her?
- (23) BY MR. WOLBRETTE:
- (24) If she was a witness. He was working
- (25) with her.

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- (1) BY THE WITNESS:
- (2) I didn't witness or observe him when he
- (3) received this letter.
- (4) EXAMINATION BY MR. WOLBRETTE:
- (5) Q Did you ever hear him talk about it?
- (6) A In what sense.
- (7) Q Was he upset? Did he indicate he
- (8) didn't understand why this was happening? Did
- (9) he express any kind of emotion about it
- (10) whatsoever?
- (11) A Yeah, he was upset that James Arthur
- (12) would not cooperate.
- (13) Q And your observation of his reaction or
- (14) his statements, did they indicate to you that he
- (15) was surprised by Mr. Arthur refusing to
- (16) cooperate?
- (17) A Yes.
- (18) Q I'll show you the next document which
- (19) is D-21, which is Mr. Sanderford's letter to
- (20) Mr. Carmichael.
- (21) A Okay.
- (22) Q And did you type this letter?
- (23) A Yes.
- (24) Q Okay. So you were aware that this
- (25) letter went out, right?

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- (1) A Right.
- (2) Q Did you have any substantive input into
- (3) the contents of this letter?
- (4) A No, none whatsoever.
- (5) Q Do you know who did?
- (6) A Not at all.
- (7) Q Do you know if Mr. Sanderford consulted
- (8) with any legal counsel before he wrote the
- (9) letter?
- (10) A I do not know.
- (11) Q And the next number is D-22.
- (12) BY MR. USDIN:
- (13) Which is dated what?
- (14) EXAMINATION BY MR. WOLBRETTE:
- (15) Q November 16th, '92, Erin Pierce to
- (16) David Newman. You don't have to look at the
- (17) bill. I'm not interested in that.
- (18) A All right.
- (19) Q I'm interested in only the first line.
- (20) "Due to the recent chaos of James Arthur, it's
- (21) taken me a couple weeks to look over the billing
- (22) I received." What chaos are you talking about?
- (23) A The fact that Axonn had received this
- (24) letter from James Arthur's attorney.
- (25) Q Well, the sentence indicates that it

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- (1) has taken you a little longer to look over the
- (2) billing than normal, right?
- (3) A Right.
- (4) Q And then you say that it was because of
- (5) the chaos created by Arthur. What was it that
- (6) was keeping you from looking at the billing in
- (7) connection with Mr. Arthur's refusal to sign?
- (8) A I can't remember exactly the details.
- (9) Q Can you remember anything about what
- (10) was going on at that time?
- (11) A I'm - I would guess, you know -
- (12) BY MR. USDIN:
- (13) Be pulling?
- (14) BY MR. WOLBRETTE:
- (15) Don't guess.
- (16) BY MR. USDIN:
- (17) Neither of us want you to guess.
- (18) BY THE WITNESS:
- (19) I don't know. I can't answer for sure.
- (20) EXAMINATION BY MR. WOLBRETTE:
- (21) Q But is it fair to say there was some
- (22) activities going on that kept you from doing
- (23) your normal routine?
- (24) A From doing, right.
- (25) Q Okay. Let's look at the next letter

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- (1) which is D-23, which the first page is a telefax
 (2) cover letter dated January 21st, 1993, from
 (3) Newman to Britton Sanderford, and the exhibit is
 (4) three pages.
 (5) The second page being a letter from
 (6) Newman to Sanderford, and the third page being a
 (7) document from the patent office.
 (8) A M'mm-h'mm (affirmative response).
 (9) Q Do you see the note up on the right
 (10) side? Can you tell us whose handwriting that
 (11) is?
 (12) A Britton Sanderford.
 (13) Q The word, "redacted" is written there.
 (14) Do you know who wrote that?
 (15) A That's Britton's handwriting.
 (16) Q Do you have any information about when
 (17) he wrote redacted or what was redacted?
 (18) A I do not know.
 (19) BY MR. USDIN:
 (20) Just for the record, I'm not sure
 (21) that's correct, but we can check, the redaction
 (22) could have been done by our office. I know we
 (23) had some redactions, but I don't know whether
 (24) that's one or not.
 (25) Q I think I mentioned this before. We

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- (1) need to know the various documents where the
 (2) word redacted is and we need to know who it was
 (3) that did the redaction and the basis of the
 (4) redaction.
 (5) EXAMINATION BY MR. WOLBRETTE:
 (6) Q Can you read the note under that is
 (7) that Mr. Sanderford's note?
 (8) A Right. "E, copy to me. Patent in
 (9) jeopardy. Call Dave Newman. Can we file
 (10) Disgruntled Employee paperwork to continue life
 (11) of patent."
 (12) Q You did see this note?
 (13) A This note?
 (14) Q Yes.
 (15) A Correct.
 (16) Q And was this note, to your
 (17) recollection, written at approximately the same
 (18) time that this letter was received, in January
 (19) of 1993?
 (20) A Yes.
 (21) Q Did you understand "Disgruntled
 (22) Employee paperwork" to mean the same thing as
 (23) the "Uncooperative Employee" that you had used
 (24) in a previous note?
 (25) A Yes.

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- (1) Q Did you have any understanding of
 (2) exactly what that paperwork consisted of?
 (3) A No.
 (4) Q Did you understand that you were to
 (5) call Dave Newman? Is that what this note says?
 (6) A That's what his note is telling me, to
 (7) call Dave Newman.
 (8) Q Having seen the note, you certainly saw
 (9) the letter, correct?
 (10) A Correct.
 (11) Q And you understood, did you not, that
 (12) if the proper affidavit or declaration was not
 (13) filed by February 19th, 1993, that the patent
 (14) would go abandoned?
 (15) BY MR. USDIN:
 (16) Objection. The letter speaks for
 (17) itself.
 (18) EXAMINATION BY MR. WOLBRETTE:
 (19) Q Do you know if Mr. Sanderford
 (20) understood that if the proper affidavit or
 (21) declaration was not filed by February 19th, the
 (22) patent would go abandoned?
 (23) BY MR. USDIN:
 (24) Objection as to what someone else
 (25) understood.

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- (1) BY THE WITNESS:
 (2) I don't know what he -
 (3) EXAMINATION BY MR. WOLBRETTE:
 (4) Q Did you ever discuss with him the
 (5) necessity of filing an affidavit or declaration
 (6) in the patent office by February the 19th, 1993?
 (7) BY MR. USDIN:
 (8) In what time frame?
 (9) BY MR. WOLBRETTE:
 (10) At any time.
 (11) BY THE WITNESS:
 (12) I don't remember when we would have had
 (13) discussions about what to do about this patent.
 (14) EXAMINATION BY MR. WOLBRETTE:
 (15) Q Do you remember any discussions you had
 (16) with him about what to do about this patent in
 (17) January or February, 1993?
 (18) A I don't recall if I spoke to Mr. Newman
 (19) or if Britton did.
 (20) Q Did you also see the document from the
 (21) patent office that's attached as the third page
 (22) of this exhibit?
 (23) A Okay.
 (24) Q Did you see this?
 (25) A M'mm-h'mm (affirmative response).

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- (1) Q At the time? We're talking about the
 (2) January, February time frame?
 (3) A Right. It was attached.
 (4) Q Okay. You see where they say, "The
 (5) inventors' affidavit or declaration (see Page 2
 (6) of the 5/7/92 action) has not been supplied?"
 (7) A Right.
 (8) Q That they were talking about the
 (9) declaration that Mr. Arthur refused to sign?
 (10) A Right, and we knew they were missing
 (11) that.
 (12) Q And you know that Mr. Arthur's attorney
 (13) had sent a letter in which he said he was
 (14) advising Arthur not to sign?
 (15) A Not to sign.
 (16) Q So you knew something had to be done by
 (17) the 19th, or the patent would go abandoned?
 (18) A Patent would go abandoned.
 (19) BY MR. USDIN:
 (20) Object to the form of the question.
 (21) Lack of foundation.
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q The next exhibit is D-24, and it's two
 (24) pages. It's a handwritten note. I don't have
 (25) the original. It could have been front and

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- (1) back. I don't know. It's been given to us in
 (2) two pages.
 (3) Can you identify the handwriting?
 (4) A That's my handwriting.
 (5) Q There's no date on this; is that
 (6) correct?
 (7) A That's correct.
 (8) Q And do you have any recollection
 (9) sitting here today what date you made these
 (10) notes?
 (11) A No, none at all.
 (12) Q Let's see if we can perhaps narrow when
 (13) it might have been.
 (14) The phone number at the top
 (15) 301-934-6100, is that Mr. Newman's office
 (16) number?
 (17) BY MR. USDIN:
 (18) If you recall?
 (19) BY MR. WOLBRETTE:
 (20) I'll be happy to show you his
 (21) correspondence.
 (22) BY THE WITNESS:
 (23) Yes, it is his phone number.
 (24) EXAMINATION BY MR. WOLBRETTE:
 (25) Q And then you have, "No. 1, 19th,

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- (1) February, aban." Is that abandoned?
 (2) A "Abandoned if we do nothing. No. 2.
 (3) Dave checking disgruntled employee, February
 (4) 3rd. Worst case, case goes abandoned on 19th.
 (5) No. 3, 600 to 1200 to patent office to revive."
 (6) Q And under that there's a space and
 (7) there's a line?
 (8) A A line and a star. "Refile the
 (9) abandoned by the 8th."
 (10) Q And the next, Page 2 of our exhibit -
 (11) and as I said, I don't know if this is a
 (12) separate page or the back 6 of it. I don't
 (13) know.
 (14) A I don't know. "Susan Evans, third year
 (15) law student, trainee. Bar in July. Works
 (16) Wednesday, Thursday, Friday."
 (17) Q We've read through everything that's on
 (18) at least these copies of the notes?
 (19) A Right.
 (20) Q Do you recall whether you called
 (21) Mr. Newman?
 (22) A Yeah. I called him.
 (23) Q We're talking about in connection with
 (24) the note that Mr. Sanderford had written on the
 (25) January 21st, 1993 letter from Newman.

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- (1) Does it seem reasonable or probable
 (2) that these notes that you wrote are notes based
 (3) on your telephone conversation with Mr. Newman?
 (4) A That's reasonable, so that it happened
 (5) after the 21st.
 (6) Q And does it seem likely to you since
 (7) you have references to the 19th of February,
 (8) "abandon if we do nothing," that the telephone
 (9) conversation took place before the 19th of
 (10) February?
 (11) A Correct.
 (12) Q And what about - there's a reference
 (13) to February 3rd. Dave checking disgruntled
 (14) employee, February 3rd. Is that you?
 (15) A I have no idea what I meant by that.
 (16) Q Does it seem reasonable that the phone
 (17) conversation occurred prior to February the 3rd?
 (18) A That's reasonable, yes.
 (19) Q And it says, "again, case goes
 (20) abandoned on the 19th," and that's -
 (21) A In other words, Dave told me if it goes
 (22) abandoned, it would be 600 to \$1200 to are
 (23) revive it.
 (24) Q What is this note at the bottom, star,
 (25) that says, "Refile the abandoned. It says

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- (1) "aban," but I'm assuming it means abandoned
 (2) patent is what you're saying?
 (3) A Correct.
 (4) Q "By the 8th." What does that mean?
 (5) A I don't know. I don't know.
 (6) Q Is that in connection with the
 (7) reviving?
 (8) A I don't know.
 (9) Q As of the January, February, 1993 time
 (10) frame, was there any other patent application
 (11) that Dave Newman was working on for Axonn that
 (12) had either gone abandoned or might go abandoned
 (13) as far as you knew, at this point?
 (14) A Not as far as I know.
 (15) Q This note, refile the abandoned by the
 (16) 8th, would apply to the patent that brings us
 (17) here?
 (18) A That seems reasonable, yes.
 (19) Q And is it reasonable that he told you
 (20) that in order to revive it, it had to be refiled
 (21) by the 8th of something?
 (22) BY MR. USDIN:
 (23) Objection. Are you asking her what
 (24) she recalls, or if you're asking her to
 (25) speculate or to assume is two different

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- (1) BY MR. WOLBRETT:
 (2) And also, would you make sure there's
 (3) nothing redacted under there. It doesn't say
 (4) it.
 (5) BY MR. USDIN:
 (6) There's a note and there's no
 (7) indication where the star comes from. I think
 (8) we wrote redacted or redaction, but I'll check.
 (9) EXAMINATION BY MR. WOLBRETT:
 (10) Q Do you know if you made known to
 (11) Mr. Sanderford what Mr. Newman had told you
 (12) about reviving the patent and how much it would
 (13) cost?
 (14) A Did I give him this note?
 (15) Q Did you either give him this note or
 (16) tell him -
 (17) A I would have given him this note.
 (18) Q Do you remember giving him the note?
 (19) A I can't say for sure.
 (20) Q Did you have any conversations with
 (21) Mr. Eckstein concerning whether or not this
 (22) patent would go abandoned on February the 19th?
 (23) A Not that I recall.
 (24) Q Let's go to D-25, which is Eckstein to
 (25) Newman, dated February 10th, '93.

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- (1) questions.
 (2) EXAMINATION BY MR. WOLBRETT:
 (3) Q Is that reasonable?
 (4) A I don't recall for sure, but it's
 (5) reasonable. But I don't know if that was the
 (6) 8th of February or the 8th of March.
 (7) Q Right. Or some other month?
 (8) A Or some other month.
 (9) Q And the note on the second page has to
 (10) do with Mr. Newman's law clerk?
 (11) A Yeah, junior assistant.
 (12) BY MR. USDIN:
 (13) Question. Were these attached in the
 (14) production?
 (15) BY MS. MANNING:
 (16) I think they're sequentially numbered.
 (17) I'm not sure whether they were attached. They
 (18) must have been because that's the way they were
 (19) copied. I have copied and recopied these
 (20) documents so much, you'd have to ask Brian.
 (21) BY MR. WOLBRETT:
 (22) I think the easy thing for you is for
 (23) you guys to look at the original.
 (24) BY MR. USDIN:
 (25) We will, but I was just curious.

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- (1) BY MR. USDIN:
 (2) It has no Bates number on it at all.
 (3) Whose is this? Ours? Yours? I'm not
 (4) objecting. I'm just curious.
 (5) BY MS. MANNING:
 (6) I don't know.
 (7) BY MR. WOLBRETT:
 (8) I don't know.
 (9) BY MS. MANNING:
 (10) I know what this is. There is an N
 (11) number on this document. I think this is a
 (12) state court document. I'll double check, but I
 (13) believe the copy we made came from an original
 (14) file as opposed to a copied file.
 (15) EXAMINATION BY MR. WOLBRETT:
 (16) Q And I only include it to see if it
 (17) refreshes your recollection. I didn't even ask
 (18) you. Do you remember that Mr. Arthur filed suit
 (19) against Axonn?
 (20) A Yes, I remember that.
 (21) Q Do you remember the date that he filed
 (22) suit?
 (23) A No, I do not.
 (24) Q Would this indicate to you, at least as
 (25) of February 10th, he had filed suit?

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- (1) A Yes.
 (2) Q Do you know who was handling this
 (3) Arthur suit on behalf of Axonn?
 (4) BY MR. USDIN:
 (5) What lawyer?
 (6) EXAMINATION BY MR. WOLBRETTE:
 (7) Q Yeah, what lawyer?
 (8) A I don't recall.
 (9) Q Do you know if Mr. Eckstein had any
 (10) role in the handling?
 (11) A His role was to find an attorney to
 (12) handle the James Arthur suit.
 (13) BY MR. WOLBRETTE:
 (14) Let's take a break.
 (15) (WHEREUPON A RECESS WAS TAKEN.)
 (16) EXAMINATION BY MR. WOLBRETTE:
 (17) Q Mr. Usdin has been kind enough to have
 (18) his office to send us the original 19, and Ms.
 (19) Pierce, can you now read that note on the right
 (20) side of the page.
 (21) BY MR. USDIN:
 (22) Just for the record, our original is a
 (23) copy as well, but the original that we have in
 (24) Stone, Pigman's offices.
 (25) BY MR. WOLBRETTE:

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- (1) Right.
 (2) BY THE WITNESS:
 (3) "We haven't filed this yet. I think
 (4) they're working on the document. As soon as
 (5) they prepare it, they'll send it for your
 (6) signature."
 (7) EXAMINATION BY MR. WOLBRETTE:
 (8) Q And do you know what document that note
 (9) refers to?
 (10) A The response to the Office Action.
 (11) BY MR. WOLBRETTE:
 (12) Okay. Well, let's go on. Ms. Manning
 (13) had to go handle another matter, so we'll just
 (14) go on.
 (15) EXAMINATION BY MR. WOLBRETTE:
 (16) Q Okay. We left off with D-25.
 (17) BY MR. USDIN:
 (18) You're still on that?
 (19) BY MR. WOLBRETTE:
 (20) We finished.
 (21) EXAMINATION BY MR. WOLBRETTE:
 (22) Q Okay. I'm going to give you what's
 (23) already been marked P-30. There may be three
 (24) copies as far as I know, which is a February
 (25) 16th, 1993 letter, from you to Dave Newman,

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- (1) correct?
 (2) A Correct.
 (3) Q Which we referred to as the "Acapulco
 (4) letter."
 (5) BY MR. USDIN:
 (6) We're on P-30?
 (7) BY MR. WOLBRETTE:
 (8) P-30.
 (9) EXAMINATION BY MR. WOLBRETTE:
 (10) Q Did you have a chance to look at it?
 (11) A M'm-m-h'mm (affirmative response).
 (12) Q I'm interested obviously in the third
 (13) paragraph, "Wireless Alarm - Serial No.
 (14) 782,345." Do you recall if you had had any
 (15) telephone conversations with Mr. Newman between
 (16) the one whenever made undated notes that's D-24
 (17) in this letter?
 (18) A I don't recall.
 (19) Q And what was the purpose of your
 (20) writing this third paragraph to Mr. Newman?
 (21) A Trying to find out what the status was.
 (22) Q Had you had any discussions with
 (23) Mr. Sanderford about the Disgruntled Employee
 (24) affidavit at this point?
 (25) A I don't recall for sure. In the

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- (1) letter, Britton and I are both wanting to know
 (2) the status.
 (3) Q And when you say, "Do we need to let it
 (4) go abandoned, then revive it," did someone
 (5) suggest to you Natoli would be possible, allow
 (6) it to go abandoned and then revive it? Had
 (7) somebody suggested that to you?
 (8) BY MR. USDIN:
 (9) Had someone told her that was an
 (10) option?
 (11) BY MR. WOLBRETTE:
 (12) Yeah, right.
 (13) BY THE WITNESS:
 (14) Steve Fant had spoken with Newman, and
 (15) that's what they had discussed.
 (16) BY MR. WOLBRETTE:
 (17) Natoli would have been an option.
 (18) EXAMINATION BY MR. WOLBRETTE:
 (19) Q Do you know if Steve Fant was speaking
 (20) with Newman about this?
 (21) A Sometimes trying to get in touch with
 (22) Newman, whoever he would answer calls from, if
 (23) he wouldn't return my calls, sometimes he would
 (24) return Steve Fant's calls because he was a
 (25) vice-president.

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- (1) Q So did Mr. Fant tell you that
(2) Mr. Newman had indicated that the patent
(3) application could go abandoned and then a
(4) revival effort could be filed?
(5) A To my recollection, yes.
(6) Q Do you remember any of the details as
(7) to what kind of revival?
(8) A No. No.
(9) Q Do you recall whether you had discussed
(10) this disgruntled employee affidavit with
(11) Mr. Fant?
(12) A I don't recall.
(13) Q Do you recall if anyone had suggested
(14) to you there would be some difficulty with
(15) filing a disgruntled employee affidavit?
(16) A No, I don't recall Natoli would be
(17) difficult.
(18) Q And at this point, that is February
(19) 16th, 1993, did you know what went into a
(20) disgruntled employee affidavit?
(21) A No. And still don't.
(22) Q And you faxed this to Mr. Newman, this
(23) letter, correct?
(24) A Yes.
(25) Q And by the way, you said, "Please call

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- (1) me soon so we can discuss these few issues?"
(2) A Right.
(3) Q And at the time that you faxed this
(4) letter to him on February 16th, 1993, were you
(5) aware that the deadline to respond to this
(6) patent office notice was February the 19th?
(7) A M'm-h'mm. Yes.
(8) Q This fax went out at 5:42 p.m.; is that
(9) correct?
(10) BY MR. USDIN:
(11) The document speaks for itself.
(12) Objection.
(13) BY THE WITNESS:
(14) Yes.
(15) EXAMINATION BY MR. WOLBRETTE:
(16) Q And that's New Orleans time?
(17) A Right.
(18) Q Which would be 6:42 p.m. Eastern time?
(19) A Right.
(20) Q Did Mr. Newman call you the in response
(21) to your February 16th, 1993 letter to him?
(22) A I don't remember.
(23) Q Take a look at the next document which
(24) is P-14, a Memorandum of February 17th, 1993, to
(25) Britton from you, "Re: Dave Newman matters."

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- (1) A Okay.
(2) Q Does that memo indicate to you or
(3) refresh your recollection that, in fact, you did
(4) have a conversation with Dave Newman after you
(5) sent him the February 16th letter?
(6) A Yes.
(7) Q And so that conversation would either
(8) have been on the evening of the 16th or on the
(9) 17th?
(10) A Correct.
(11) Q Do you have any recollection of which
(12) it was?
(13) A No.
(14) Q Is it correct that Newman told you in
(15) that conversation that he was waiting on Mike's
(16) decision as to whether it would be more
(17) advantageous on the Arthur suit to let the
(18) patent go unintentionally abandoned?
(19) BY MR. USDIN:
(20) Objection. The document speaks for
(21) itself.
(22) BY THE WITNESS:
(23) Yes.
(24) EXAMINATION BY MR. WOLBRETTE:
(25) Q Mike being Mike Eckstein?

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- (1) A Mike Eckstein.
(2) Q Newman told you that he was waiting on
(3) Mr. Eckstein's decision, correct?
(4) BY MR. USDIN:
(5) Same objection.
(6) BY THE WITNESS:
(7) Correct.
(8) EXAMINATION BY MR. WOLBRETTE:
(9) Q Were you aware, up to this point, that
(10) he was waiting on Mr. Eckstein's decision?
(11) A No.
(12) Q Did you talk to Mr. Eckstein after you
(13) had a conversation with Mr. Newman on February
(14) the 17th?
(15) A Not that I recall.
(16) Q Have you ever talked to Mr. Eckstein
(17) about the subject matter that's discussed in
(18) this paragraph, specifically whether Mr. Newman
(19) was waiting on Eckstein's decision?
(20) A I don't recall. I really don't recall.
(21) Q Is it true that you are aware on
(22) February the 17th that if a disgruntled employee
(23) affidavit was to be filed, it had to be filed by
(24) the 19th, that is, within two days?
(25) A Right.

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- (1) Q Now, so this is a memo to
 (2) Mr. Sanderford and you asked him a question
 (3) whether Mike, that is, Eckstein, correct,
 (4) discussed that issue -
 (5) A M'mm-h'mm (affirmative response).
 (6) Q - the disgruntled employee affidavit
 (7) with you before he left, correct?
 (8) A Correct.
 (9) Q Did Mr. Sanderford tell you whether he
 (10) had, in fact, discussed that issue with
 (11) Mr. Eckstein?
 (12) A I don't remember.
 (13) Q And you say that you called Mike's
 (14) office, and I take it it's Eckstein's office?
 (15) A Right.
 (16) Q And had Shelly - was that his
 (17) secretary?
 (18) A Mike's secretary, correct.
 (19) Q "Ask him when he called in, and Mike
 (20) told Shelly he would call Dave tonight." Do you
 (21) know if Mike and Dave ever spoke about this
 (22) question?
 (23) A I don't know.
 (24) Q Well, you did give this memo to
 (25) Mr. Sanderford on the 17th; is that correct?

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- (1) A M'mm-h'mm (affirmative response).
 (2) Q And did you, in addition to giving it
 (3) to him, let him know that a decision had to be
 (4) made? Did you say, it's today?
 (5) A It's in here.
 (6) BY MR. USDIN:
 (7) The documents speak for themselves and
 (8) also includes an option.
 (9) BY THE WITNESS:
 (10) Did I verbally say it?
 (11) EXAMINATION BY MR. WOLBRETTE:
 (12) Q Yeah.
 (13) A No. It's in the memo.
 (14) Q Do you know whether Mr. Sanderford read
 (15) your memo on or about the 17th?
 (16) A Yes, because he's got a note to me on
 (17) another matter.
 (18) Q You're referring to the note, obviously
 (19) in the third paragraph, which is?
 (20) A Yes, "give to Ed."
 (21) Q There's some handwriting down at the
 (22) bottom. "Three months no later than June," if
 (23) I'm reading that correctly?
 (24) A That's correct.
 (25) Q Whose handwriting is that?

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- (1) A That's mine.
 (2) Q What does that mean?
 (3) A I don't know.
 (4) Q Well, on the 17th of February when you
 (5) wrote this memo, it was clear to you that
 (6) something had to be done very quickly or else
 (7) the patent was going to go abandoned, correct?
 (8) A Correct.
 (9) BY MR. USDIN:
 (10) Objection, because there's a lack of
 (11) foundation. It also says it can be revived for
 (12) a fee of \$585, so it's an incomplete.
 (13) Representation.
 (14) EXAMINATION BY MR. WOLBRETTE:
 (15) Q I stand by my question. The patent
 (16) was going to go abandoned if something didn't
 (17) happen very quickly? Whether or not it could be
 (18) revived later, it was going to be abandoned if
 (19) something didn't happen very quickly, correct?
 (20) A That's correct.
 (21) Q And it was your job to keep
 (22) Mr. Sanderford informed of such things, was it
 (23) not?
 (24) A It was. And Mr. Newman advised us that
 (25) if it did go abandoned, it was okay. He could

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- (1) get it revived, for a fee of \$585.
 (2) Q Sitting here today, are you satisfied
 (3) or do you believe that Mr. Sanderford was aware
 (4) of the situation as of February the 17th, 1993,
 (5) the situation as you described in your
 (6) memorandum?
 (7) BY MR. USDIN:
 (8) Objection as to what Mr. Sanderford
 (9) was or was not aware of on that date.
 (10) BY THE WITNESS:
 (11) And I don't understand your question.
 (12) EXAMINATION BY MR. WOLBRETTE:
 (13) Q Okay. You were the office manager?
 (14) A Correct.
 (15) Q You worked closely with Mr. Sanderford
 (16) in connection with these patents?
 (17) A Right.
 (18) Q These patents were the business or an
 (19) important part of the business of Axonn,
 (20) correct?
 (21) A Correct.
 (22) Q You certainly didn't want to lose any
 (23) patent rights?
 (24) A That's right.
 (25) Q And it was your job to keep

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- (1) Q While there was still time to do
(2) something before the 19th?
(3) A Correct.
(4) Q Did Mr. Sanderford give you any
(5) instructions as to what to do?
(6) A I don't recall.
(7) Q Do you recall speaking with Mr. Newman
(8) after writing this memorandum?
(9) A Regarding?
(10) Q What to do about this patent
(11) application, whether to let it go abandoned,
(12) whether to file a disgruntled employee?
(13) A That would not have been my decision to
(14) make. That would have been between Mr. Newman
(15) and Mr. Sanderford.
(16) Q Okay. Well, you do know that nothing
(17) was filed by the 19th of February with the
(18) patent office, correct?
(19) A Right.
(20) Q Do you know why nothing was filed?
(21) A Not that I recollect.
(22) Q You have no recollection of whether
(23) there was a decision made by Axonn to allow it
(24) to go abandoned?
(25) A It wouldn't have been my decision.

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- (1) Q I understand that.
- (2) A So I don't recollect.
- (3) Q I understand it was not your decision,
- (4) but since you were involved with Mr. Sanderford
- (5) keeping him apprised and so forth, you may have
- (6) overheard what he said, or he may have told you
- (7) something?
- (8) A No.
- (9) Q You have no recollection?
- (10) A I don't recall.
- (11) Q Let's look at the next number. And
- (12) before we go back, the words "redacted" are
- (13) written on the left side of this. You did not
- (14) write those; is that correct?
- (15) BY MR. USDIN:
- (16) For the record, I believe that came
- (17) from my office, and again, I'll check and
- (18) confirm that.
- (19) BY MR. WOLBRETTE:
- (20) And if so, we will need to know what
- (21) the basis of the redaction is.
- (22) BY MR. USDIN:
- (23) Sure.
- (24) EXAMINATION BY MR. WOLBRETTE:
- (25) Q The next is P-15, which is February 17,

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- (1) 1993, to Newman. According to the second sheet,
 (2) this was faxed at 6:40 p.m.; is that correct?
 (3) A Yes.
 (4) Q So would this, in all likelihood, have
 (5) been after your telephone conversation with
 (6) Newman and after you wrote the memo to Britton?
 (7) A Correct.
 (8) Q So this would indicate that you did, in
 (9) fact, speak with Mike Eckstein on February 17th,
 (10) 1993, correct?
 (11) A Correct.
 (12) Q And since it says, "I just spoke with
 (13) Mike Eckstein," it would have been sometime in
 (14) the afternoon of the 17th, correct?
 (15) A Afternoon or evening.
 (16) [WHEREUPON A RECESS WAS TAKEN.]
 (17) EXAMINATION BY MR. WOLBRETTE:
 (18) Q We were interrupted by a telephone
 (19) call, so I'll strike that question and start
 (20) over again.
 (21) When you spoke with Mike Eckstein in
 (22) the afternoon of February 17th, did you discuss
 (23) with him whether the patent, whether he thought
 (24) the patent should go unintentionally abandoned
 (25) or whether or not a disgruntled employee

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- (1) affidavit was going to be filed?
 (2) A I don't remember my conversation with
 (3) him.
 (4) Q You have no recollection of anything
 (5) that occurred during that conversation; is that
 (6) correct?
 (7) A Except that Mike was wanting to talk
 (8) with Dave about his representation on the
 (9) Voyager suit.
 (10) Q And is the Voyager suit, is that the
 (11) California lawsuit?
 (12) A Life Point -
 (13) Q Involving Cargill?
 (14) A Voyager/Cargill.
 (15) Q Other than that, you do not recall
 (16) anything about that conversation?
 (17) A Other than that, I can't recall
 (18) anything else, right. Right.
 (19) Q You don't recall whether you asked him
 (20) about the status?
 (21) A No.
 (22) Q About filing or not filing on the 19th?
 (23) A No, I don't.
 (24) Q Obviously they did speak at some point.
 (25) Do you know whether they spoke on either the

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- (1) 17th or the 18th of February?
 (2) A No, I don't.
 (3) Q Well, on the 19th of February, 1993,
 (4) did you know that nothing was going to be filed
 (5) with the patent office?
 (6) A I -
 (7) BY MR. USDIN:
 (8) Object. You can ask her what her
 (9) knowledge was.
 (10) BY MR. WOLBRETTE:
 (11) That's what I just asked her.
 (12) BY MR. USDIN:
 (13) I think you're asking what was going
 (14) to happen, and she may or may not know.
 (15) BY THE WITNESS:
 (16) I don't recall. I mean I know that the
 (17) patent went abandoned, so that tells me nothing
 (18) was done on the 19th.
 (19) EXAMINATION BY MR. WOLBRETTE:
 (20) Q But my question is, were you aware on
 (21) the 19th that nothing was going to be done? Did
 (22) you have knowledge Natoli was going to be the
 (23) situation?
 (24) BY MR. USDIN:
 (25) Same objection as to the form of the

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- (1) question.
 (2) BY THE WITNESS:
 (3) I don't know. I don't know.
 (4) EXAMINATION BY MR. WOLBRETTE:
 (5) Q And you don't recall whether or not
 (6) Mr. Sanderford, after February 17, discussed
 (7) this question with you ever again, not ever
 (8) again, but between the 17th and the 19th? You
 (9) have no recollection?
 (10) A No.
 (11) Q And you have no recollection what, if
 (12) anything, may have been said between you and
 (13) Michael Eckstein about this?
 (14) A Right.
 (15) Q And you have no recollection of any
 (16) further conversations with David Newman between
 (17) the 17th and February the 19th?
 (18) A No.
 (19) Q I'm correct, you have no recollection?
 (20) A You're correct. I have no
 (21) recollection.
 (22) Q Can you tell me what this is, and can
 (23) you can you identify it? First of all, in whose
 (24) handwriting is this?
 (25) A This is Britton, and in the right

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(1) might want to read the message on the cover
(2) sheet.
(3) A [Viewing document.] All right. Okay.
(4) Q The cover sheet indicates that
(5) Mr. Sanderford was getting a copy, correct?
(6) A Yes.
(7) Q Did you see this letter at the time it
(8) was sent? Don't remember?
(9) A I don't remember.
(10) Q The cover sheet, Leah Molaison?
(11) A I don't remember how to pronounce it.
(12) I think that's how you pronounce it, "Molaison."
(13) Q Was he Eckstein's secretary or one of
(14) his secretaries?
(15) A Yes.
(16) Q And the letter in the second paragraph
(17) says, "First, I wanted to talk about the
(18) required patent action that is to take place."
(19) BY MR. USDIN:
(20) You said in the first paragraph?
(21) EXAMINATION BY MR. WOLBRETTE:
(22) Q I'm sorry, the second paragraph.
(23) "First, I wanted to talk about the required
(24) patent action that is to take place prior to
(25) week's end vis-a-vis James Arthur." And it goes

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(1) on and discusses some other things.
(2) Do you know of any required patent
(3) action to take place prior to week's end
(4) vis-a-vis James Arthur as of February 18th,
(5) 1993, other than the February 19 deadlines set
(6) by the patent office?
(7) A No, I don't know of anything other than
(8) the February 19th deadline.
(9) Q You had said before, I think, and I
(10) asked you what Mr. Eckstein's role was, that he
(11) was corporate counsel. I think those were the
(12) words you used. What do you mean by that?
(13) A He handled preparation of license
(14) agreements. Any legal matters other than the
(15) filing of patents.
(16) Q And I think you indicated he had had
(17) some role in hiring the lawyer involved in the
(18) Arthur lawsuit, Mr. Lund?
(19) A I believe so.
(20) Q Was that a function Mr. Eckstein
(21) performed from time to time, hiring lawyers that
(22) might be needed, and other things?
(23) A To my knowledge, this is a first.
(24) Q Okay. We've seen some reference to
(25) reviving the patent application in these

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- (1) documents, right?
- (2) A Right.
- (3) Q Did you have any understanding as to
- (4) when the revival action had to be filed? And
- (5) I'm talking about in the February, 1993 time
- (6) frame. Did you have any understanding?
- (7) BY MR. USDIN:
- (8) You're talking about during February?
- (9) BY MR. WOLBRETTE:
- (10) Of 1993, yeah.
- (11) BY THE WITNESS:
- (12) I was trying to see if any of my notes
- (13) would jog my memory. No. I don't recall a time
- (14) frame.
- (15) EXAMINATION BY MR. WOLBRETTE:
- (16) Q At any time subsequent to February,
- (17) 1993, did David Newman ever discuss with you
- (18) what the time frame was?
- (19) A That's what I'm saying. I don't
- (20) recollect any discussion of a time frame to
- (21) revive the patent.
- (22) Q Are you saying you did not have a
- (23) conversation, or are you saying you don't
- (24) remember whether you did or not?
- (25) A I don't remember whether I did or not.

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- (1) Q Let me ask you for some help. These
- (2) are the - D-29. We've been given some phone
- (3) bills.
- (4) BY MR. USDIN:
- (5) Do I have those?
- (6) BY MR. WOLBRETTE:
- (7) Oh, yes.
- (8) EXAMINATION BY MR. WOLBRETTE:
- (9) Q And I need some help deciphering how
- (10) this works. I'm not going to ask you to go
- (11) through every phone bill, I can assure you. But
- (12) on the first page, I see Direct Dials, Call
- (13) AT&T, and then on the following pages, it looks
- (14) like "Dial 1 Wats Call Detail" and various
- (15) telephone numbers and some codes. Do you know
- (16) how the billing system -
- (17) A Where are you talking about, "codes?"
- (18) Q There's an accounting code.
- (19) A I know what you're talking about.
- (20) BY MR. USDIN:
- (21) Where are you?
- (22) BY MR. WOLBRETTE:
- (23) If you look at the top of the first
- (24) page in the left-hand column, it says,
- (25) "Accounting Code, 01." Total for 01 further

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- (1) down, and then it goes to 02. Total for 02.
- (2) BY MR. USDIN:
- (3) Okay, I see.
- (4) EXAMINATION BY MR. WOLBRETTE:
- (5) Q And I'm just trying to figure out if
- (6) there's some systematic or some method to this
- (7) madness and how this works?
- (8) A Yes. In order to dial out long
- (9) distance, you had to have a code; in other
- (10) words, you'd dial the number, and in order for
- (11) the call to go through, you'd have to put in a
- (12) code.
- (13) 01 I believe was Britton's employee
- (14) number, so those were different employee numbers
- (15) that were authorized to make long distance
- (16) calls.
- (17) Q Okay. Do you remember who 02 was?
- (18) A No.
- (19) Q Presumably, there's some list
- (20) somewhere: And the phone numbers that are
- (21) shown, would those be the different extensions
- (22) within the office?
- (23) A Right.
- (24) Q But theoretically, anybody with a code
- (25) could go to any extension, use that number and

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- (1) punch their own code in?
- (2) A What do you -
- (3) Q Let's saying if you had four phones in
- (4) the office, say, if I could go to any -
- (5) A Any employee could go to any phone,
- (6) provided they had an authorized code, to make a
- (7) long distance call.
- (8) Q So the code tells us who made the call
- (9) if we had a list that would show us who?
- (10) A Who 01 is and who 02.
- (11) Q I understand.
- (12) A Correct.
- (13) Q And why is there a page that has AT&T
- (14) Direct Dial calls on there? Was that a separate
- (15) system from these other calls, the wats calls?
- (16) A 283-9500, that was Britton's business
- (17) line at his home.
- (18) Q That was 9500, so these would be calls
- (19) that Britton made?
- (20) A From a different location.
- (21) Q This would be Mr. Sanderford's home
- (22) business phone?
- (23) A Right.
- (24) Q So the second call on this is "February
- (25) 18th, La Plata, Maryland. 301-934-6400," which

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- (1) we've already said is Newman's office phone?
- (2) A Correct.
- (3) Q Eleven minutes at 10:01 a.m., right?
- (4) A Yes.
- (5) Q So someone at Mr. Sanderford's home, using his business phone number, spoke with somebody in Mr. Newman's office for 11 minutes on that day?
- (6) A That's correct.
- (7) Q Okay.
- (8) BY MR. USDIN:
- (9) Where are you?
- (10) BY MS. MANNING:
- (11) 30. It's dated March 12th.
- (12) EXAMINATION BY MR. WOLBRETTE:
- (13) Q D-30. This is a March 12, '93 letter to David Newman from Britton Sanderford. I don't know if it's been sent or not. There are a lot of notes on it, and apparently there's a -- maybe it's the draft behind it.
- (14) A Right.
- (15) Q I just want you to identify the markings on here, up in the top right, circled squiggle in it. What's that?
- (16) A That's an "AX," telling me to use Axonn

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- (1) SF." That's me and Steve Fant. And then the note that has the square around it, "E. what's this?" And then my response to him next to it, "HBS, This is the wireless ap that we let go abandoned because JA would not sign, et cetera, E.P."
- (2) Q Why did you say, this is the wireless ap that we let go abandoned?"
- (3) A I don't recall, because it went abandoned, because nothing was done on the 19th.
- (4) Q And again, the word "redacted" is on the bottom. You did not put that there?
- (5) A No. I don't even know what that word means.
- (6) BY MR. WOLBRETTE:
- (7) Why don't we take a short break to eat our lunch.
- (8) (WHEREUPON A LUNCH RECESS WAS TAKEN.)
- (9) (MS. MANNING IS NOW PRESENT.)
- (10) EXAMINATION BY MR. WOLBRETTE:
- (11) Q We were at D-33. I think that was the Newmans letter to Britton, May 10th, '93. At this time in May of 1993, were you aware of any criticism being leveled at Mr. Newman in connection with this patent application going

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- (1) letterhead as opposed to Life Point Systems letterhead.
- (2) Q Who wrote that, do you know?
- (3) A Whose markings?
- (4) Q Whose markings and notes are these?
- (5) A All of these are Britton's except for down at the bottom where it has, "HBS, do you want to ask him to confirm in writing, E.P."
- (6) So we were revising this letter.
- (7) Q Okay. Am I correct that the two pages attached to it are Britton's draft of the letter?
- (8) A Britton's draft.
- (9) Q Okay. And D-31, which is also dated March 12th, is the final draft of Natoli was sent to Newman; is that correct?
- (10) A That's correct.
- (11) Q Okay. Let's go to the next one, 32 and 33. I'm going to give you D-32 and 33, and they are the same letter but with different notes on them, or at least one different note that I see.
- (12) And it's a May 10, '93, letter to Sanderford from Newman: In closing of course, I'm going to ask you to translate the notes.
- (13) A At the very top it says, "CC to E and

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- (1) abandoned?
- (2) A I don't recall. I mean I had difficult dealings with Mr. Newman from the get-go.
- (3) Q What were those difficulties?
- (4) A Problems with him returning my phone calls. Conversations that we would have on the phone between he and I would be different than conversations he had with -- you know, just communication problems.
- (5) Q Okay. Well, as of May the 10th, 1993, do you know of knowledge, either Mr. Sanderford or anyone else within Axonn, who's saying that Mr. Newman had allowed this patent to go abandoned on February 19th?
- (6) A It was -- Mr. Newman told us, being Axonn, that if the patent went abandoned, it was okay. Not to worry. That he could get it revived.
- (7) Q And as of May the 10th, 1993, you don't recall anybody criticizing Mr. Newman in connection with this patent at that point?
- (8) A No. Because he had informed us that it was okay if it went abandoned.
- (9) Q Sitting here today, you don't know whether Mr. Newman talked to you about when this

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- (1) revival HAD to take place?
 (2) A Correct. I don't know.
 (3) Q Let's look at the next one.
 (4) BY MR. USDIN:
 (5) What's the document number, 97?
 (6) BY MR. WOLBRETTE:
 (7) Right.
 (8) EXAMINATION BY MR. WOLBRETTE:
 (9) Q Have you ever seen this before?
 (10) A No, I haven't.
 (11) Q Do you have any idea whose note this is
 (12) up on top above the, "to Michael Eckstein from
 (13) David Newman?"
 (14) A "Regarding."
 (15) Q Yes.
 (16) A Yes, I do.
 (17) Q Who is it?
 (18) A Michele Soler.
 (19) Q And who is Michele Soler?
 (20) A She was a secretary at Axonn.
 (21) Q And it says, "Re?"
 (22) A "Regarding JA patent abandonment."
 (23) Q The date on this is August the 6th,
 (24) right?
 (25) A M'mm-h'mm (affirmative response).

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- (1) Q -- sent to Eckstein. Do you recall any
 (2) discussion with Mr. Sanderford or anybody else
 (3) at or about this time, August, '93, about the
 (4) advantages or disadvantages of filing an
 (5) affidavit, disgruntled employee affidavit with
 (6) the patent office?
 (7) A I don't recall.
 (8) Q Do you recall ever hearing any
 (9) discussion, whether it was with anybody, about
 (10) the advantages or the disadvantages of filing a
 (11) disgruntled employee affidavit with the patent
 (12) office?
 (13) A No.
 (14) Q Let's go to the next exhibit which is
 (15) --
 (16) BY MR. USDIN:
 (17) No.
 (18) BY MS. MANNING:
 (19) That one doesn't have a date. It's
 (20) going to have to be one of these others from
 (21) that time period.
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q Let's go on to this one, P-33.
 (24) A Okay.
 (25) Q Do you know if you typed this for

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- (1) Mr. Sanderford?
 (2) A I don't recall.
 (3) Q Do you recall seeing this before?
 (4) A No.
 (5) Q Do you recall whether Mr. Newman spoke
 (6) to you or Mr. Sanderford, if you know, about the
 (7) matters Mr. Sanderford is inquiring?
 (8) A I don't know.
 (9) Q Let's go to P-34, which is to Steve
 (10) Fant from Newman. And at the top it indicates
 (11) 10-11-93, which is the same date as the previous
 (12) document. Have you ever seen this before?
 (13) A No, I haven't.
 (14) Q Do you recall any discussions with
 (15) Mr. Fant concerning the matters that are
 (16) discussed in this exhibit?
 (17) A No, not at all.
 (18) Q Let me go back a little bit. Could you
 (19) get D-19 out. It's that one, November the 6th.
 (20) A Okay.
 (21) Q Now, I'm not going to ask you anything
 (22) about that. The number on there, the Axonn
 (23) number is 597 and the next page is 598.
 (24) The Axonn Exhibit No. 599 which is the
 (25) number following that is a note which says --

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- (1) would you read that for us?
 (2) A "Erin, Dave Newman returned your call.
 (3) 6:50 p.m. JS"
 (4) Q Who is JS?
 (5) A John Sylvest.
 (6) Q Who is who?
 (7) A He was an engineer, programmer.
 (8) Q There's no date on that, right?
 (9) A Correct.
 (10) Q And we have no idea in what file it
 (11) was. Perhaps if you know, it would shed some
 (12) light on that. Do you have any way of knowing?
 (13) BY MR. USDIN:
 (14) My understanding, I think both of
 (15) these documents were in the, when we went back
 (16) to search yet again, in the supplemental
 (17) production, so they weren't produced as part of
 (18) the main files. But when we went back to second
 (19) and third check, both these two documents came
 (20) out, and we were the ones who Bate stamped this,
 (21) these numbers sequentially.
 (22) EXAMINATION BY MR. WOLBRETTE:
 (23) Q But do we know what file they came out
 (24) of? Is there any way we could figure out what
 (25) the date of that was, where it was in the file?

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- (1) BY MR. USDIN:
 (2) If there is an answer to that, you
 (3) will be able to ask someone at Axonn when you
 (4) get their depositions.
 (5) EXAMINATION BY MR. WOLBRETTE:
 (6) Q Looking at this, do you have any way of
 (7) knowing the date upon which this thing was
 (8) written?
 (9) A No.
 (10) Q The next number is P-35, or the next
 (11) exhibit I should say, October 20th, '93, to David
 (12) Newman from Sanderford, and this indicated that
 (13) you typed this very short letter?
 (14) A Yes.
 (15) Q And the letter asks if Newman has the
 (16) paperwork to get the patent revived, and the
 (17) serial number referred to is the one we're
 (18) talking about in this case, correct?
 (19) A Correct.
 (20) Q "I would like to submit to James Arthur
 (21) this week prior to other planned activities."
 (22) You see that?
 (23) A Yes.
 (24) Q Can you enlighten us as to what planned
 (25) activities he was referring to?

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- (1) A No.
 (2) Q We've already seen that there's been a
 (3) letter from Mr. Arthur's attorney saying he's
 (4) not going to sign this thing?
 (5) A Right.
 (6) Q Are you aware of whether there was some
 (7) change in the status of that as of October the
 (8) 20th, 1993?
 (9) BY MR. USDIN:
 (10) You're talking about the letter that
 (11) was a year before?
 (12) BY THE WITNESS:
 (13) It was a year prior to that.
 (14) EXAMINATION BY MR. WOLBRETTE:
 (15) Q I was wondering if there was some
 (16) indication Mr. Arthur may sign the affidavit?
 (17) A I don't know.
 (18) Q Do you know what paperwork
 (19) Mr. Sanderford is talking about?
 (20) A No.
 (21) Q P-36 is the next document, and I'm told
 (22) that there was originally a fax at the top of
 (23) this, so the document that you've got doesn't
 (24) indicate what that date was, and we'll have to
 (25) find a better copy than this. Let me just ask

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- (1) you to assume that it was subsequent to the
 (2) October 20 letter that we just looked at. I'm
 (3) not just precisely what date it was. Do you
 (4) remember seeing this document, P-36, before?
 (5) A No, I do not.
 (6) Q And P-37 is dated October the 25th, '93
 (7) from Sanderford to Newman?
 (8) A From Newman to Sanderford.
 (9) Q I'm sorry, from Newman to Sanderford,
 (10) correct?
 (11) A Correct.
 (12) Q Okay. And could you take a look at
 (13) both the affidavit and the declaration that's
 (14) attached to it. You don't have to read every
 (15) word. I'm not going to quiz you on it, but just
 (16) to get the general idea of it. Okay?
 (17) A M'm-h'mm (affirmative response).
 (18) Q And this declaration, the draft of it,
 (19) it says "we," and then it has the names of the
 (20) three inventors including Mr. Arthur, right?
 (21) A Correct.
 (22) Q And the subject matter of this has to
 (23) do with the changes that were made, right?
 (24) A Correct.
 (25) Q This is basically back to the beginning

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- (1) when we were trying to get the three inventors
 (2) sign this declaration?
 (3) A Exactly.
 (4) Q Okay. Now look at the next one. I'm
 (5) not sure - just mark it as the next number. D
 (6) what?
 (7) BY MS. MANNING:
 (8) 36.
 (9) BY MR. USDIN:
 (10) What is D-36?
 (11) BY MR. WOLBRETTE:
 (12) It's the same thing. Next Axonn's
 (13) Number 957 and 958 and this is same, but
 (14) attached to it is apparently a faxed copy that
 (15) there appears to be some fax notation, December
 (16) the 8th or something. I can't make it out.
 (17) BY MR. USDIN:
 (18) Where are you? I'm sorry?
 (19) BY MR. WOLBRETTE:
 (20) December 10th at the top.
 (21) BY MR. USDIN:
 (22) Yeah.
 (23) EXAMINATION BY MR. WOLBRETTE:
 (24) Q And then if you look through it, this
 (25) version of the declaration has been executed by

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- (1) Mr. Arthur, apparently Mr. Rouquette and
 (2) Mr. Sanderford. And I can't tell you why this
 (3) is attached to the October 25th letter.
 (4) I'm just giving you the documents as
 (5) they were given to me, but it would appear, at
 (6) least, that the inventors didn't - Arthur
 (7) didn't sign until December the 10th. you see
 (8) that?
 (9) A I see, yes.
 (10) Q Do you know why Arthur did not sign
 (11) until December the 10th when the document was
 (12) sent down on October the 25th?
 (13) A I do not know.
 (14) Q You do not recall any discussions with
 (15) Mr. Sanderford or anybody else concerning why
 (16) there was a delay?
 (17) A No.
 (18) Q Do you recall whether any discussions
 (19) concerning whether or not there was a deadline
 (20) to get this, this declaration filed with the
 (21) patent office in November of 1993?
 (22) A I don't recall.
 (23) Q You don't recall one way or the other?
 (24) A Right.
 (25) Q The next number is D-37, which is a

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- (1) letter from Eckstein to Mr. Carmichael,
 (2) Mr. Arthur's lawyer, and it's dated October
 (3) 29th, 1993.
 (4) BY MR. USDIN:
 (5) D-37?
 (6) BY MR. WOLBRETTE:
 (7) Yeah.
 (8) EXAMINATION BY MR. WOLBRETTE:
 (9) Q And it shows a copy to Britton
 (10) Sanderford and Daniel Lund?
 (11) A Okay.
 (12) Q Do you remember seeing this letter
 (13) before?
 (14) A No.
 (15) Q Do you know what the status of the
 (16) Arthur litigation was on October the 29th, 1993?
 (17) A No.
 (18) Q Do you know if there were settlement
 (19) discussions going on?
 (20) A I really, I don't remember.
 (21) Q And the next exhibit is P-38.
 (22) BY MR. USDIN:
 (23) Where are you now?
 (24) EXAMINATION BY MR. WOLBRETTE:
 (25) Q This is P-38. It's Eckstein to Newman,

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- (1) 11-5-93, and my question to you is going to be,
 (2) have you ever seen this before?
 (3) A I don't recall seeing this.
 (4) Q And do you have any knowledge about the
 (5) substantive matters that are discussed in here
 (6) or conversations or anything of that nature?
 (7) A No.
 (8) Q And do you have any knowledge as to why
 (9) there was a delay until November the 5th, 1993,
 (10) in sending this letter to Mr. Newman?
 (11) BY MR. USDIN:
 (12) Object to the form of the question.
 (13) BY THE WITNESS:
 (14) I don't recall.
 (15) BY MR. USDIN:
 (16) Delay from what?
 (17) EXAMINATION BY MR. WOLBRETTE:
 (18) Q Delay from October the 25th when the
 (19) documents were sent down.
 (20) The next number is D-38, just the first
 (21) page of that same letter, and there's a note on
 (22) the top, and I'm going to ask you again to
 (23) translate it.
 (24) A "Sent to Mr. Newman. B. Sanderford,
 (25) 11-5-93."

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- (1) Q And is that Mr. Sanderford's
 (2) handwriting?
 (3) A No. I don't know whose handwriting
 (4) that is.
 (5) Q Okay. And the next number is P-39,
 (6) which is a letter to Eckstein from Newman dated
 (7) November the 18th, '93.
 (8) BY MR. USDIN:
 (9) Which one are you on?
 (10) EXAMINATION BY MR. WOLBRETTE:
 (11) Q Newman to Eckstein, November the 18th,
 (12) '93, P-39. And again my question to you is
 (13) going to be, have you ever seen this before?
 (14) A I don't recall ever seeing this.
 (15) Q Do you recall any discussion during the
 (16) November, 1993 time frame that Mr. Arthur's was
 (17) finally going to sign this declaration and
 (18) refused to sign?
 (19) A I remember that there were discussions
 (20) of settlement, but I can't remember if it was in
 (21) that time frame.
 (22) Q Okay. And did the discussions of
 (23) settlement include, regardless of when they
 (24) were, did they include discussions that
 (25) Mr. Arthur would finally sign his declaration?

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- (1) A I wouldn't have been privy to that.
 (2) Q D-39 is a letter dated November the
 (3) 18th, 1993, to Carmichael from Eckstein with a
 (4) "bcc by fax to Sanderford and Lund." Have you
 (5) ever seen this before?
 (6) A No, sir.
 (7) Q The next is P-40. This is a November
 (8) the 19th, '93, from you to Newman, and it's
 (9) faxed at 5:25 in the evening?
 (10) A That's right.
 (11) Q And you are complaining that Mr. Newman
 (12) was not returning your phone calls, right?
 (13) A That's right.
 (14) Q And you said, "I left a message for you
 (15) to call me one week ago," correct?
 (16) A M'mm-h'mm (affirmative response).
 (17) Q And he had not called back?
 (18) A Correct.
 (19) Q That would have been November the 12th;
 (20) is that right?
 (21) A Right.
 (22) Q Now, it says, "General Patent Matters."
 (23) Did you know if this included anything
 (24) concerning the patent application that brings us
 (25) here today?

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- (1) A I can't say for sure.
 (2) Q D-40, December 13th letter to Eckstein
 (3) from Carmichael. Could you take a look at that.
 (4) A Okay.
 (5) Q Have you ever seen this?
 (6) A No.
 (7) Q Do you recall any conversation, at or
 (8) about the time that this letter was written in
 (9) December of 1993, to the effect that Mr. Arthur
 (10) did not have knowledge of all the changes made
 (11) in the original application contrary to the
 (12) apparent language of the declaration?
 (13) A No.
 (14) Q And when I say "discussion," I mean
 (15) discussion with anybody?
 (16) A Right, no.
 (17) Q And D-41 is a December 13 letter from
 (18) Newman to Sanderford, and there's a note on the
 (19) bottom I'm going to ask you about because it
 (20) appears to be your note.
 (21) A Right.
 (22) Q HBS is Mr. Sanderford?
 (23) A That's right.
 (24) Q You say, "Before you spit these Newman
 (25) bills back to me, please just call me in to

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- (1) discuss. I still have last month's bills to
 (2) discuss with you." What was the reason for your
 (3) note here?
 (4) A In other words, put it in his box.
 (5) Don't tell me no, we can't pay it until he
 (6) discusses it with me first.
 (7) Q I don't understand. Why would he tell
 (8) he you he couldn't pay it or wouldn't pay it?
 (9) A In other words, I was not attaching my
 (10) normal memo with this invoice explaining all of
 (11) the charges. I wanted to have a sit down,
 (12) face-to-face and let's go through last month's
 (13) bills and this invoice.
 (14) Q Well, was there some problem with the
 (15) bill or some questions about whether he was
 (16) going to be paid or not?
 (17) A I don't recall that.
 (18) Q This was just routine, review of the
 (19) bills that you had not yet had an opportunity to
 (20) do?
 (21) A In other words, I had not given him a
 (22) memo and discussed last month's bills, so before
 (23) he spit it back to me, let's sit down and
 (24) discuss both months.
 (25) Q For whatever reason, you were behind on

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- (1) your reviews?
 (2) A Right.
 (3) Q I'm just trying to make sure that there
 (4) wasn't any discussion of, let's not pay Newman
 (5) for whatever reason?
 (6) A Right. It was, let's sit down and
 (7) discuss.
 (8) Q As you would normally do?
 (9) A Right.
 (10) Q I understand. The next number is 42.
 (11) It's a letter from Eckstein to Newman on
 (12) December the 16th, 1993. Have you seen this
 (13) before?
 (14) A I don't remember seeing this.
 (15) Q And the next one is D-43 to Eckstein,
 (16) enclosing another red line original sheet?
 (17) A Was this attached, or is this something
 (18) else?
 (19) Q And my question would be, do you
 (20) remember seeing this?
 (21) A No, I do not.
 (22) Q D-44, Eckstein to James Arthur,
 (23) December 20, 1993, "bcc to Peter Carmichael and
 (24) cc to Britton Sanderford." Do you remember
 (25) seeing this?

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- (1) A No, I don't.
 (2) Q And the next number is D-45. Eckstein
 (3) to Newman dated December 23rd, 1993. Do you
 (4) remember seeing that, which attaches a
 (5) declaration from Arthur which appears to be
 (6) executed on December 22nd, 1993?
 (7) A No, I don't.
 (8) Q D-46, January 12, 1994, from Newman to
 (9) Sanderford. It appears that you typed it, and
 (10) there's some notes on the top I'm going to ask
 (11) you to decipher. Do you remember this?
 (12) A M'mm-h'mm (affirmative response). My
 (13) note at the top is dated "1-12-94, 5:40 p.m.
 (14) signed and faxed, E.P."
 (15) Q What's this thing in the circle?
 (16) A That's "thanks."
 (17) BY MR. USDIN:
 (18) What?
 (19) BY MR. WOLBRETTE:
 (20) "Thanks."
 (21) EXAMINATION BY MR. WOLBRETTE:
 (22) Q P-42, January 13th, '94, to Erin Pierce
 (23) from Newman, enclosing various documents which
 (24) are not attached to that exhibit. Do you
 (25) remember seeing that?

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- (1) A I can't recall it.
 (2) Q Well, did you -
 (3) A I mean -
 (4) Q Go ahead. Do you remember at about
 (5) this time that the first petition to revive the
 (6) application was filed and included the various
 (7) affidavits or the affidavit from the inventors?
 (8) A Yeah, the declarations of the
 (9) inventors, right.
 (10) Q And then the next number is P-45, which
 (11) is Newman's letter to you and Sanderford, March
 (12) 17th, 1994, enclosing the decision from the
 (13) USPTO, denying the revival as having been filed
 (14) more than a year after the date of abandonment.
 (15) BY MR. USDIN:
 (16) Is there a question?
 (17) BY THE WITNESS:
 (18) What was the question?
 (19) BY MR. WOLBRETTE:
 (20) I just wanted her to identify the
 (21) document. I'm waiting for you to read it.
 (22) BY THE WITNESS:
 (23) Okay. (Viewing document.)
 (24) EXAMINATION BY MR. WOLBRETTE:
 (25) Q Do you remember receiving this letter?

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- (1) A M'mm-h'mm (affirmative response).
 (2) Q In March of 1994?
 (3) A Right.
 (4) Q What was Mr. Sanderford's reaction to
 (5) this letter?
 (6) A I don't recall his reaction.
 (7) Q What was your reaction of the letter?
 (8) A Disappointment that they turned down
 (9) the application for revival.
 (10) Q At this time in March of 1994, did you
 (11) hear anybody at Axonn criticize Mr. Newman
 (12) because this application had not been revived?
 (13) A I don't recall.
 (14) Q One way or the other?
 (15) A One way or the other.
 (16) Q Are you aware of any documents in which
 (17) Mr. Newman is criticized by anybody at Axonn in
 (18) connection with this refusal to revive by the
 (19) patent office?
 (20) A Not that I recollect.
 (21) Q Do you remember whether Axonn consulted
 (22) any other patent counsel at this point in time,
 (23) March of 1994?
 (24) A Not to my knowledge.
 (25) Q Or thereafter until Mr. Newman resigned

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- (1) as patent counsel?
 (2) A I don't know. I really don't know.
 (3) Q You're not aware -
 (4) A Although I was office manager, I was
 (5) not privy to all the ongoing.
 (6) Q You were not aware of it?
 (7) A Right.
 (8) Q The next document is P-2. And it's a
 (9) multipage document that's entitled "Telefax
 (10) Cover Letter, from the Offices of David Newman
 (11) dated 3-29-94." Susan Bailey is the sender, and
 (12) it's to Erin Pierce.
 (13) BY MR. USDIN:
 (14) You want her to read all the
 (15) attachments?
 (16) BY MR. WOLBRETTE:
 (17) No. There's just one part I'll direct
 (18) you to.
 (19) EXAMINATION BY MR. WOLBRETTE:
 (20) Q Do you remember that at about this time
 (21) there was going to be a second attempt to revive
 (22) the patent?
 (23) A Yes, I do.
 (24) Q And do you remember that it was based
 (25) on the concept of writ ability?

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- (1) A Right.
- (2) Q Meaning that Mr. Arthur refused to
- (3) sign?
- (4) A Right, so it was unavoidable.
- (5) Q And you remember that Susan Bailey sent
- (6) you this and that Mr. Sanderford had to look at
- (7) it and approve it?
- (8) A And approve.
- (9) Q When I say this, I mean P-2 in the
- (10) documents contained in that exhibit. Okay.
- (11) The next number is D-47. And this is
- (12) another letter from Susan Bailey to you - well,
- (13) to Britton with a terminal disclaimer and
- (14) affidavit and revival of the above patent,
- (15) right, same subject as the previous one?
- (16) A Correct.
- (17) Q Do you know whether there was a second
- (18) draft of the affidavit?
- (19) A I'm just a little confused why there's
- (20) one on the 29th and one on the 30th.
- (21) A I don't know why.
- (22) Q Okay. And what about these notes from
- (23) the first page? This is your note, I take it,
- (24) on the bottom, "HBS, those are originals for you
- (25) to sign if everything is okay." That's your.

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- (1) And this one at the top, it seems to be a star
- (2) with a circle?
- (3) A Right. That's from Britton to me.
- (4) M/E. M would be Michele Soler. Does this have
- (5) my changes on it."
- (6) Q And the word "redacted" under that,
- (7) which is not your word. That's somebody else's?
- (8) A Right.
- (9) Q Do you remember that Mr. Sanderford was
- (10) making changes to the draft affidavits? Was
- (11) that happening at this point?
- (12) A Yes.
- (13) Q And the next one would be D-48. The
- (14) top sheet is a fax transmittal from Britton
- (15) Sanderford to Dawn, Dave Newman dated 3-30-94.
- (16) Could you take a look at that.
- (17) A Okay.
- (18) Q And can you tell us what this document
- (19) is?
- (20) A Okay. I believe that this document -
- (21) Q That is D-48?
- (22) A D-48 is actually before D-47. These
- (23) are his changes.
- (24) Q Okay.
- (25) A That he's asking, "Michele/erin, does

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- (1) this have my changes on it."
- (2) Q So in other words, P-2 is sent by Susan
- (3) Bailey to you?
- (4) A Right.
- (5) Q And then -
- (6) A D-48.
- (7) Q Mr. Sanderford makes some changes?
- (8) A And then we get this from D-48, and
- (9) he's asking does this draft include these
- (10) changes.
- (11) Q I've got you. Okay. Okay. And then
- (12) the next document would be D-48, which is April
- (13) the 6th, '94, from Susan Bailey?
- (14) BY MR. USDIN:
- (15) Wait a minute. You've already done
- (16) D-48.
- (17) BY MR. USDIN:
- (18) April 6th?
- (19) EXAMINATION BY MR. WOLBRETTE:
- (20) Q April 6, '94.
- (21) BY MR. USDIN:
- (22) Document KUE3173?
- (23) BY MR. WOLBRETTE:
- (24) Right.
- (25) EXAMINATION BY MR. WOLBRETTE:

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- (1) Q Okay.
- (2) A Okay.
- (3) Q D-49. This says, "Enclosed is a
- (4) replacement affidavit," which is the Sanderford
- (5) affidavit. Do you know why there was a
- (6) replacement affidavit?
- (7) A I have to look and see if she made his
- (8) changes that he was referring to.
- (9) Q Well, we have a limited amount of time,
- (10) but in any case, this is a replacement affidavit
- (11) in the same patent prior to the filing of the
- (12) second affidavit to revive. And the note says,
- (13) "MX sent?"
- (14) A "Revisions to Newman." And
- (15) unfortunately, I can't read my date.
- (16) Q I think it says 4-11-94, and I think we
- (17) see in the next exhibit that's the date. Whose
- (18) handwriting is that?
- (19) A That's mine.
- (20) Q And MX is Mike Eckstein?
- (21) A Mike Eckstein.
- (22) Q And D-50?
- (23) A Was that D-49?
- (24) A That was D-49.
- (25) Q D-50 is a letter from Eckstein to David

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- (1) Newman. "Attention: Susan Bailey."
 (2) A Okay.
 (3) Q And had you seen this document before?
 (4) A I do recall seeing this, yes.
 (5) Q So Mr. Eckstein was making some
 (6) additional changes to the affidavit; is that
 (7) right?
 (8) A That's correct.
 (9) Q And I have screwed up, but we'll go
 (10) back in time a little bit. This is P-4, which I
 (11) believe to be - they contain the same letters
 (12) in it as D-49, the '94 letter from you and
 (13) Mr. Sanderford to Susan. And the cover, telefax
 (14) cover sheet says, "This has MX's comments
 (15) incorporated with HBS comments," correct?
 (16) A That's correct.
 (17) Q So apparently there had been some
 (18) previous input by Mr. Eckstein before April the
 (19) 6th?
 (20) A I don't know. I don't know that.
 (21) Q All right. And then P-5 is April 13,
 (22) '94, from Susan Bailey to you and Mr. Sanderford
 (23) and another replacement affidavit; is that
 (24) right?
 (25) A Right.

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- (1) Q And then on P-48, May 20th, '94.
 (2) A P-48 is the Newman to Sanderford.
 (3) Q And is that the letter indicating that
 (4) now this attempt, the second attempt to revive
 (5) has been filed?
 (6) A Has been made.
 (7) Q With Mr. Sanderford's affidavit?
 (8) A Right.
 (9) BY MS. MANNING:
 (10) It's the revival effort in April of
 (11) '94 and May of '94.
 (12) BY MR. WOLBRETTE:
 (13) I believe the same thing is in there.
 (14) I just wanted to show you one that was signed by
 (15) Mr. Sanderford, the one that was filed.
 (16) BY MS. MANNING:
 (17) It would have gone with this cover
 (18) letter, P-48.
 (19) EXAMINATION BY MR. WOLBRETTE:
 (20) Q If you look at the bottom of Page 3 in
 (21) his declaration there's a paragraph that begins,
 (22) "The filings of motions for summary judgment."
 (23) Do you see that?
 (24) A M'm-h'mm (affirmative response).
 (25) Q And this is the second sentence, it

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- (1) says, when notice of abandonment dated May 3rd,
 (2) '93, was received, there was no reasonable
 (3) course of action, given the strained
 (4) relationships existent between the inventors
 (5) that could be taken to force Mr. Arthur's needed
 (6) cooperation. Nor was it desirable, given the
 (7) subject matter of the ongoing litigation, to
 (8) attempt to file a declaration without
 (9) Mr. Arthur's signature."
 (10) Okay. You see that? Why was it not
 (11) desirable, given the subject matter of the
 (12) ongoing litigation, to attempt to file the
 (13) declaration without Mr. Arthur's signature?
 (14) A I wouldn't know that.
 (15) Q That's not something you were
 (16) instructed on; is that right?
 (17) A No.
 (18) Q Who would know that, other than
 (19) Mr. Sanderford, who signed this affidavit?
 (20) BY MR. USDIN:
 (21) And Mr. Newman who drafted it?
 (22) BY THE WITNESS:
 (23) And Mr. Newman.
 (24) EXAMINATION BY MR. WOLBRETTE:
 (25) Q You don't know?

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- (1) A No.
 (2) Q Do you know if there was anybody else
 (3) who was involved? Do you know if Mr. Eckstein
 (4) was involved in the authored litigation?
 (5) BY MR. USDIN:
 (6) Was involved? Object to the form of
 (7) the question.
 (8) EXAMINATION BY MR. WOLBRETTE:
 (9) Q Was Mr. Eckstein involved in monitoring
 (10) or overseeing the Arthur litigation?
 (11) A I don't know.
 (12) BY MR. WOLBRETTE:
 (13) I'm not going to give that a separate -
 (14) it's already P-5.
 (15) BY MS. MANNING:
 (16) P-49 I think. Wasn't it P-49?
 (17) BY MR. WOLBRETTE:
 (18) Yeah, you're right.
 (19) EXAMINATION BY MR. WOLBRETTE:
 (20) Q Okay. The next number, D-51, is this a
 (21) note that you wrote to Mr. Sanderford?
 (22) A These go together. (Indicating)
 (23) BY MS. MANNING:
 (24) They go in numerical sequence.
 (25) EXAMINATION BY MR. WOLBRETTE:

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- (1) Q I don't know whether we'll make them
 (2) one exhibit or two exhibits. The Axonn number
 (3) on the first page is 1622, and the second page
 (4) is 1623, and they both appear to be handwritten
 (5) notes by you, but we're going to ask you about
 (6) that. Can you take a look at the two pages.
 (7) A (Viewing documents.) Okay.
 (8) Q Did these two pieces of paper go
 (9) together?
 (10) A Oh, I didn't read the second page. I
 (11) don't think the two are related.
 (12) Q Why don't we make the second one D-52
 (13) then. The first one, D-51, this is "Patent news
 (14) for today." You're reporting to your boss,
 (15) right?
 (16) A Right.
 (17) Q What's going on with these patents?
 (18) A Right. "No. 1, we received the
 (19) ribboned copy of the Frequency Agile Radio from
 (20) the patent office. No. 2, Newman sent us
 (21) verification that the Amendment was filed to
 (22) attempt to revive the Wireless Alarm application
 (23) that James hosed."
 (24) Q James hosed?
 (25) A Meaning -

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- (1) Q James Arthur?
 (2) A Yeah.
 (3) Q Meaning that he had caused the
 (4) abandonment?
 (5) BY MR. USDIN:
 (6) Object to the form of the question as
 (7) to what caused the abandonment.
 (8) EXAMINATION BY MR. WOLBRETTE:
 (9) Q I'm asking her what she meant by
 (10) "hosed."
 (11) BY MR. USDIN:
 (12) And I'm objecting to the form of the
 (13) question.
 (14) EXAMINATION BY MR. WOLBRETTE:
 (15) Q Fine. What do you mean by "James
 (16) hosed?"
 (17) A That because he wouldn't sign the
 (18) declaration that this whole ordeal ensued.
 (19) Q That this happened. Okay. He didn't
 (20) say that Newman hosed in this -
 (21) BY MR. USDIN:
 (22) Objection. The document speaks for
 (23) itself?
 (24) A That's correct.
 (25) EXAMINATION BY MR. WOLBRETTE:

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- (1) Q At this point in May of 1994, when
 (2) you're enclosing the second attempt to revive,
 (3) had you heard anybody at Axonn suggest that this
 (4) was David Newman's fault?
 (5) A Not to my recollection.
 (6) Q There was some writing up at the top
 (7) that appears to be in a different handwriting.
 (8) A That's Britton. You want me to read
 (9) it?
 (10) Q Could you read it.
 (11) A He's referencing No. 1, the Frequency
 (12) Agile Radio status. "EP, copy to Paul and
 (13) mailed today." And then this is a cover letter
 (14) that he wants me to type up for Paul. And Paul
 (15) is Paul Cook of Cell Net Data Systems. "Well,
 (16) it's official and we have a divisional and a CIP
 (17) on the way. I've been in Switzerland on
 (18) business and going out of town tomorrow on
 (19) holiday. When would be a good time for me to
 (20) call you after Monday."
 (21) Q That's okay.
 (22) A "Next week."
 (23) Q Thank you. And the second - I'm
 (24) mindful that we need to get you out of here in
 (25) 35 minutes, so we'll just try to skip over

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- (1) things that are not important.
 (2) What's the next one? I have some
 (3) trouble with it because it looks like there's
 (4) something written over it?
 (5) A "I color-coded everything. Hopefully,
 (6) making it quicker for you to see what's what."
 (7) And he has "thanks" written across it. And I
 (8) have no idea.
 (9) Q That would be Mr. Sanderford?
 (10) A Mr. Sanderford's thanks, and I have no
 (11) idea what I was even color-coding.
 (12) Q What about the one on the bottom? This
 (13) is on D-52 for the record.
 (14) A It's hard because Britton's written on
 (15) top of my note again.
 (16) My note says, "We've been through this
 (17) before. There are four wireless patents. You
 (18) have my copy of the one that went abandoned from
 (19) Newman."
 (20) His note on top of mine says, "Give me
 (21) Examiner's note. Match each patent something to
 (22) Nos. 1 through 5." I don't know.
 (23) Q Okay.
 (24) A I'm sorry.
 (25) Q You're doing the best you can, and

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- (1) that's all we'd ask. I appreciate it. The next
 (2) number is D-53, and it's an August 2nd fax to
 (3) Mike Eckstein from someone at Mr. Newman's
 (4) office. It's a letter from Susan Bailey
 (5) enclosing an affidavit for Arthur.
 (6) BY MR. USDIN:
 (7) I'm sorry, 53?
 (8) BY MR. WOLBRETTE:
 (9) Yeah
 (10) EXAMINATION BY MR. WOLBRETTE:
 (11) Q I'm also going to give you D54 and P-7,
 (12) because I think they all relate to the same
 (13) subject matter.
 (14) A Okay.
 (15) Q Do you remember that at about this
 (16) time, and I don't remember the exact date, but
 (17) that the patent office had issued a ruling where
 (18) they said that the second attempt to revive
 (19) wasn't sufficient because they wanted, in
 (20) addition to Mr. Sanderford's affidavits, they
 (21) needed Mr. Arthur's affidavits, Mr. Rouquette's
 (22) affidavits?
 (23) BY MR. USDIN:
 (24) Object to the form of the question.
 (25) BY MR. WOLBRETTE:

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- (1) I understand. I'm just trying to get
 (2) through this. Do you remember that there was a
 (3) problem?
 (4) A Actually, no.
 (5) Q Just assume Natoli's the case, that the
 (6) second application to revive was rejected and
 (7) that this was an attempt to get additional
 (8) affidavits. Okay? You don't have any
 (9) recollection of this?
 (10) A No.
 (11) Q Let's move onto the next number which
 (12) is P-8.
 (13) BY MR. USDIN:
 (14) What are you on?
 (15) EXAMINATION BY MR. WOLBRETTE:
 (16) Q P-8. Does this refresh your
 (17) recollection that Mr. Eckstein was working on
 (18) Mr. Arthur's affidavit in connection with what
 (19) would be the third attempt to revive?
 (20) A Somewhat.
 (21) Q Do you have any recollection of why Mr.
 (22) - or maybe you never had, do you know why
 (23) Mr. Eckstein wanted the facts and circumstances
 (24) to be more vague than was put in the original
 (25) draft?

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- (1) A I wouldn't have been privy to that
 (2) information.
 (3) Q And then P-9 is an August 16, 1994,
 (4) letter from Newman - I'm sorry, Susan Bailey
 (5) with Eckstein, revised draft. Do you know if
 (6) you saw this at the time?
 (7) A I vaguely recall this as well.
 (8) Q All right. You were not involved in
 (9) the specific wording of the affidavit?
 (10) A In the wording?
 (11) Q Yes.
 (12) A Oh, no.
 (13) Q That was between Mr. Eckstein?
 (14) A That was what the attorneys were there
 (15) for.
 (16) Q And D-55, which is another document,
 (17) can you identify the notes on this?
 (18) A You want me to translate Britton's
 (19) notes?
 (20) Q First of all, who wrote the notes on
 (21) here?
 (22) A That's Britton's handwriting.
 (23) Q All of them?
 (24) A M'mm-h'mm (affirmative response). The
 (25) note at the top left says, "Send this for me."

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- (1) From Britton." Down in the middle on the right,
 (2) "Dear Dave: See my note. The rest looks fine.
 (3) Please send an executable doc. Thanks."
 (4) And then on the left, "It should be a
 (5) divisional of the initial patent that was not
 (6) part of or a result of a CIP."
 (7) Q And D-56, is an August 24, 1994, letter
 (8) to you and Mr. Sanderford from Susan Bailey,
 (9) enclosing a copy of the letter and afterwards
 (10) which was faxed to Eckstein on August the 6th.
 (11) Correct?
 (12) Do you remember getting this? I'm
 (13) sorry, August the 16th. I'm sorry. I misspoke.
 (14) And the next number -
 (15) A I don't recall one way or the other.
 (16) Q You don't recall this, okay. The last
 (17) paragraph says, "Erin, I appreciate your jogging
 (18) this matter as these affidavits must be filed
 (19) before September 14th." You don't have any
 (20) recollection either of this?
 (21) A Not one way or another, no.
 (22) Q And D-57 is from Eckstein to
 (23) Carmichael, dated August 30th, 1994, and there's
 (24) some notes on it. And this is the letter, at
 (25) least the letter indicates that it's enclosed

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- (1) the final affidavit for Arthur's signature. Can
 (2) you tell me who wrote the notes and what they
 (3) say?
 (4) A At the top right-hand corner from me
 (5) dated 9-2-94 to Britton. "HBS, FYI James Arthur
 (6) affidavit has been sent to Carmichael. EP."
 (7) A note from Britton to me. "EP call
 (8) Newman. There's one for Rouquette and I to
 (9) sign, also."
 (10) Q And P-54 is a letter from Britton to
 (11) Newman in which he resigns as patent counsel?
 (12) BY MR. USDIN:
 (13) Object to the form.
 (14) EXAMINATION BY MR. WOLBRETTE:
 (15) Q Do you remember Mr. Newman withdrawing
 (16) his as patent counsel?
 (17) A Yes, I do.
 (18) Q And he references a conflict of
 (19) interest which has arisen as a result of the
 (20) termination by Life Point Systems, of the
 (21) relationship between Life Point and himself and
 (22) Mr. Freeman. Do you have any knowledge of that,
 (23) what that was all about?
 (24) A My recollection is that Life Point
 (25) Systems was not happy with the representation by

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- (1) Q And let me just be specific. Axonn's
 (2) new patent counsel is a man named Eckhardt
 (3) Kuesters from the Washington, D.C. area. Have
 (4) you had any contact with him?
 (5) A After I left, after I resigned from
 (6) Axonn, there was a period of maybe, maybe - I
 (7) want to say about three months, maybe three to
 (8) four months, that I was a consultant to Axonn in
 (9) that because I was pretty much the only one that
 (10) handled, you know, all the patent matters. They
 (11) needed me to train whoever was going to be my
 (12) replacement. I do recall one or two
 (13) conversations with Mr. Kuesters, getting
 (14) everything switched over.
 (15) Q Did you have any conversations with
 (16) Mr. Kuesters about why the application had gone
 (17) abandoned on February the 19th, 1993?
 (18) A No.
 (19) Q Did anybody ever contact you to find
 (20) out your recollection of the events in February
 (21) of 1993, concerning why the application went
 (22) abandoned?
 (23) BY MR. USDIN:
 (24) In connection with the revival?
 (25) EXAMINATION BY MR. WOLBRETTE:

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- (1) Mr. Newman and Mr. Freeman in the
 (2) Voyager/Cargill suit, and sought other counsel.
 (3) Q Mr. Newman then wrote this letter
 (4) withdrawing as patent counsel?
 (5) A Correct.
 (6) Q Are you aware of any discussion within
 (7) Axonn firing Mr. Newman as his patent counsel?
 (8) A Not that I can recollect. And again,
 (9) that would be something that they would not have
 (10) - I would not have been privy to that
 (11) information.
 (12) Q We can only ask for your own knowledge.
 (13) A Right.
 (14) Q Okay. And you left Axonn in December
 (15) of '94, correct?
 (16) A M'mm-h'mm (affirmative response).
 (17) Q And do you recall that before you left
 (18) in 1994, in November of 1994 specifically, that
 (19) this third attempt to revive the patent
 (20) application was rejected by the patent office?
 (21) A I do remember that.
 (22) Q After you left Axonn, have you had any
 (23) contact by anyone in connection with further
 (24) attempts to verify the patent application?
 (25) A No.

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- (1) Q Yeah, in connection with the subsequent
 (2) revival attempts?
 (3) A Wait. I'm not -
 (4) Q That was a terrible question. There
 (5) were subsequent attempts to revive the patent
 (6) application. You're aware of that?
 (7) A Right.
 (8) Q Mr. Kuesters filed one in 1995, and my
 (9) question is, did anybody, prior to Mr. Kuesters
 (10) filing that revival attempt in May of 1995, did
 (11) anybody from Axonn contact you to ask your
 (12) recollection of what had occurred in February of
 (13) 1993?
 (14) A Not that I recall.
 (15) Q Mr. Eckstein, did he ever contact you
 (16) to find out what your recollection was of the
 (17) events surrounding the abandonment of the patent
 (18) of February of 1993?
 (19) A No.
 (20) Q Has anyone shown you a copy of the
 (21) declaration signed by Mr. Newman dated April the
 (22) 28th of 1995?
 (23) A No.
 (24) BY MR. WOLBRETTE:
 (25) Why don't we take a very brief break.

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- (1) It's about quarter to three. I'm done with the
 (2) documents. I may have a few general questions.
 (3) Let me consult with my lawyer.
 (4) (WHEREUPON A RECESS WAS TAKEN.)
 (5) EXAMINATION BY MR. WOLBRETTE:
 (6) Q Okay. This lawsuit against Mr. Newman
 (7) that brings us here today was filed in March of
 (8) 1995. Were you aware that this lawsuit had been
 (9) filed?
 (10) A No. Not at all.
 (11) Q Until you found out you were going to
 (12) be a witness?
 (13) A Until Steve Usdin called me and advised
 (14) me of the deposition.
 (15) Q Did you have anything to do with the
 (16) licensing efforts?
 (17) A No, not at all.
 (18) Q And you indicated Mr. Fant was the
 (19) person responsible for that within the company?
 (20) A Correct.
 (21) Q Did you ever hear either Mr. Fant or
 (22) Mr. Sanderford say that the situation of this
 (23) particular patent we've been talking about all
 (24) day was creating a problem getting the
 (25) technology licensed?

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- (1) BY MR. USDIN:
 (2) Object to the form.
 (3) BY THE WITNESS:
 (4) Yes. It would affect licensees.
 (5) EXAMINATION BY MR. WOLBRETTE:
 (6) Q You heard that?
 (7) A If you're going to ask me for a date or
 (8) time, I don't remember date and time, but, yes.
 (9) Q Do you remember who? Was it Mr. Fant?
 (10) A It would have been both.
 (11) Q But you can't recall what they said or
 (12) whether they said it, other than they indicated
 (13) in general that there was some difficulty?
 (14) A Well, the Axonn's and Life Point's
 (15) licensee revolved around these patents.
 (16) Q Do you remember the names of any
 (17) specific licensees that they were concerned
 (18) about?
 (19) A I don't know which patents, you know,
 (20) were for which licensees, no.
 (21) Q Let me ask you, since you were the
 (22) office manager, to give me some brief
 (23) information about how the files were kept, did
 (24) Mr. Sanderford have his own set of files versus
 (25) company files versus Mr. Fant's files? How were

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- (1) the files set up?
 (2) A Well, that's one of the things that I
 (3) did, actually put a filing system into place, I
 (4) guess about six to nine months after I started.
 (5) Once upon a time when the company was very
 (6) small, each licensee had one, you know, for
 (7) instance, AT&T was a licensee. There was an
 (8) AT&T file.
 (9) Britton would ask for certain types of
 (10) documents, and Steve would ask for other types
 (11) and the engineers would want different types.
 (12) So we took each licensee and categorized
 (13) engineering-type documents, legal documents.
 (14) Let's see. What were the four categories. I
 (15) know we had drawings in one and then the patent
 (16) files were kept separate, and, you know, the
 (17) patent files, also I had to put a filing system
 (18) into place for those.
 (19) Q So with respect to licenses, there was
 (20) a separate file for each licensee or potential
 (21) licensee?
 (22) A Or potential licensee, and then each
 (23) licensee was subcategorized into the particular
 (24) type of document or correspondence that it was.
 (25) Q So if Mr. Fant was talking to someone,

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- (1) a potential licensee or writing them letters or
 (2) making memorandum of his discussions with them,
 (3) those type of things would be in the file of
 (4) that particular licensee?
 (5) A Correct.
 (6) Q Did Mr. Fant keep, in addition to that,
 (7) his own personal file?
 (8) A I don't know.
 (9) Q How about Mr. Sanderford, did he keep a
 (10) personal file?
 (11) A No. They would just ask the
 (12) secretaries if they needed something.
 (13) Q How about a chronological file or
 (14) reading file of letters that was sent out, did
 (15) Mr. Sanderford keep such a file?
 (16) A I don't know.
 (17) Q You did not keep one?
 (18) A I did not keep one.
 (19) Q Did Mr. Fant, do you know?
 (20) A I don't know.
 (21) Q I had asked you earlier if you had any
 (22) conversations with Mr. Newman about when the, or
 (23) the deadline as to when the attempt to revive
 (24) had to be filed, and you indicated you didn't
 (25) recall one way or the other?

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- (1) A Right.
 (2) Q What I didn't ask you was whether you
 (3) had any conversations with anybody else from his
 (4) office about that subject, such as Susan Bailey
 (5) or anybody else. Do you recall having any?
 (6) A Not that I recall.
 (7) Q You've seen these document references
 (8) to disgruntled employee affidavits, and I think
 (9) there was another phrase you used to describe
 (10) it.
 (11) A Right.
 (12) Q Do you know if anyone at Axonn ever
 (13) asked David Newman to draft such an affidavit?
 (14) A I don't know.
 (15) Q You did not?
 (16) A I did not.
 (17) Q Do you know if anyone at Axonn asked
 (18) David Newman to prepare a continuation
 (19) application in connection with the patent that
 (20) ultimately went abandoned?
 (21) A I don't know.
 (22) Q You did not?
 (23) A I did not.
 (24) Q Did you review any documents in
 (25) preparation for this deposition?

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- (1) A No.
 (2) Q Did you do anything other than talk to
 (3) Mr. Usdin?
 (4) A I met with Mr. Usdin two weeks ago.
 (5) Q You didn't talk to anybody else?
 (6) A No.
 (7) Q Mr. Eckstein or Mr. Sanderford or
 (8) Mr. Fant?
 (9) A I spoke with Mr. Sanderford very
 (10) briefly. I think the day after I talked with
 (11) Steve.
 (12) Q Well, with respect to the licensing and
 (13) potential problems because of the status of this
 (14) particular patent, is it fair to say you recall
 (15) some general discussions, but you don't recall
 (16) any specifics?
 (17) A Correct.
 (18) BY MR. WOLBRETTE:
 (19) Okay. I think that's it. Thank you.
 (20) EXAMINATION BY MR. USDIN:
 (21) Q Just a couple of questions I want to
 (22) ask you right at three when you have to leave,
 (23) but I'll ask a couple anyway.
 (24) A That's okay.
 (25) Q Prior to the time that Mr. Newman

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- (1) resigned as the lawyer for Axonn and in
 (2) connection with the patent that we're here on as
 (3) Mr. Wolbrette has said, upon whom did Axonn rely
 (4) for advice regarding its patent rights?
 (5) A Dave Newman.
 (6) Q He was their patent lawyer?
 (7) A Right.
 (8) Q And he was the one they looked to
 (9) tell him whether they were processing the patent
 (10) properly; is that correct?
 (11) A That's correct.
 (12) Q And he was the one they relied on to
 (13) tell them what steps they should take, each step
 (14) of the way along the process, correct?
 (15) A Exactly.
 (16) Q Did Mr. Newman ever tell you that the
 (17) patent could go abandoned and then be revived?
 (18) A Yes.
 (19) Q He told you that directly?
 (20) A He told me and Britton and Steve, all
 (21) the various individuals that he talked to, that
 (22) not to worry. If it had to go abandoned, it was
 (23) not a big deal to revive.
 (24) Q And that was prior to February 19th,
 (25) 1993, correct?

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- (1) A Correct.
 (2) BY MR. USDIN:
 (3) I have no further questions at this
 (4) time.
 (5) BY MR. WOLBRETTE:
 (6) Thank you very much.
 (7) * * * * *
 (8) (AT THIS TIME THE DEPOSITION WAS
 (9) CONCLUDED AND THE RECORD WAS CLOSED.)
 (10)
 (11)
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 (23)
 (24)
 (25)

- (1) REPORTER'S CERTIFICATE
(2)
(3)
(4) I, Giselle B. Ford, R.P.R.,
(5) Certified Court Reporter, Certificate 85116,
(6) current and in good standing, do hereby certify
(7) that the above-named witness, after having been
(8) first duly sworn to testify to the truth, did
(9) testify as hereinabove set forth;
(10)
(11) That the testimony was reported by
(12) me in shorthand and transcribed under my
(13) personal direction and supervision, and is a
(14) true and correct transcript, to the best of my
(15) ability and understanding;
(16)
(17) That I am not of counsel, not
(18) related to counsel or the parties hereto, and
(19) not in any way interested in the outcome of this
(20) matter.
(21)
(22)
(23)
(24) Giselle B. Ford, R.P.R.
Certified Court Reporter
(25)

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Concordance Report

UNIQUE WORDS: 1,310

TOTAL OCCURRENCES:
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21,623

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